

1 complaint and shall dismiss a complaint, or portion of the complaint, if it is “frivolous, malicious or
2 fails to state a claim upon which relief may be granted; or . . . seeks monetary relief from a defendant
3 who is immune from such relief.” 28 U.S.C. § 1915A(b); 28 U.S.C. § 1915(e)(2). A plaintiff’s claim
4 is frivolous “when the facts alleged rise to the level of the irrational or the wholly incredible, whether or
5 not there are judicially noticeable facts available to contradict them.” *Denton v. Hernandez*, 504 U.S.
6 25, 32-33 (1992).

7 **III. PLEADING STANDARDS**

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

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

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).

20 Conclusory and vague allegations do not support a cause of action. *Ivey v. Board of Regents*, 673 F.2d
21 266, 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 the truth and determine whether the facts would make the plaintiff entitled to relief; conclusions

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

4 **IV. DISCUSSION AND ANALYSIS**

5 Here, Plaintiff’s complaint indicates his application and appeal for Social Security benefits
6 were denied, and he seeks review of the subsequent decision by the Commissioner of Social Security
7 upholding these decisions. (Doc. 1 at 1-2.) The Court has jurisdiction over such claims pursuant to 42
8 U.S.C. §405(g), which provides in relevant part:

9 Any individual, after any final decision of the Commissioner made after a hearing to
10 which he was a party, irrespective of the amount in controversy, may obtain a review of
11 such decision by a civil action commenced within sixty days after the mailing to him of
12 such decision or within such further time as the Commissioner may allow. Such action
13 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.

14 *Id.* Except as provided by statute, “[n]o findings of fact or decision of the Commissioner shall be
15 reviewed by any person, tribunal, or governmental agency.” 42 U.S.C. § 405(h). The Supreme Court
16 noted the purpose of the legislation was “to forestall repetitive or belated litigation of stale eligibility
17 claims.” *Califano v. Sanders*, 430 U.S. 99, 108 (1977).

18 The Appeals Council denied Plaintiff’s request for review of the decision rendered by an
19 administrative law judge on November 7, 2014, at which time the decision of the administrative law
20 judge became the decision of the Commissioner. (Doc. 1 at 2.) Accordingly, Plaintiff’s request for
21 judicial review is timely, and the Court has jurisdiction over the matter pursuant to 42 U.S.C. § 405(g).

22 **V. CONCLUSION AND ORDER**

23 Plaintiff’s complaint states a cognizable claim for review of the administrative decision denying
24 Social Security benefits. Based upon the foregoing, **IT IS HEREBY ORDERED:**

- 25 1. Plaintiff’s motion to proceed *in forma pauperis* (Doc. 2) is **GRANTED**;
- 26 2. The Clerk of Court is **DIRECTED** to issue summons as to the defendant, Carolyn
27 Colvin, Acting Commissioner of Social Security;
- 28 3. The Clerk of Court is **DIRECTED** to issue and serve Plaintiff with Social Security Case

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Documents, including the Scheduling Order, Order regarding Consent, the Consent Form, and USM-285 Forms; and

- 4. The U.S. Marshal is DIRECTED to serve a copy of the complaint, summons, and this order upon the defendant as directed by Plaintiff in the USM Forms.¹

IT IS SO ORDERED.

Dated: January 15, 2015

/s/ Jennifer L. Thurston
UNITED STATES MAGISTRATE JUDGE

¹ If Plaintiff's counsel chooses to serve the summons, complaint, and this order upon the Defendant without using the services of the U.S. Marshal, Plaintiff will not later be able to seek an award of costs for service given her *in forma pauperis* status and the authorization for service by the U.S. Marshal. See *DeArmon v. Colvin*, 2013 U.S. Dist. LEXIS 137858 at *5 (E.D. Cal. Sept. 25, 2013) (explaining that where the plaintiff is proceeding in forma pauperis and the U.S. Marshal has been directed to serve the defendant, the plaintiff may not recover expenses related to service).