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

MOLLIE CHRISTINE PEREZ,)	Case No.: 1:15-cv-0236- JLT
Plaintiff,)	
v.)	ORDER GRANTING PLAINTIFF’S MOTION TO
)	PROCEED INFORMA PAUPERIS
)	(Doc. 2)
CAROLYN W. COLVIN,)	
Acting Commissioner of Social Security,)	ORDER DISMISSING COMPLAINT WITH
Defendant.)	LEAVE TO AMEND
)	

Plaintiff Mollie Christine Perez seeks to proceed *in forma pauperis* with an action for judicial review of the administrative decision denying her application for Social Security benefits. Pending before the Court are the complaint (Doc. 1) and motion to proceed *in forma pauperis* (Doc. 2) filed by Plaintiff on February 12, 2015. Because Plaintiff does not provide sufficient facts for the Court to determine the matter of its jurisdiction, Plaintiff’s complaint is **DISMISSED with leave to amend**.

I. Proceeding in forma pauperis

The Court may authorize the commencement of an action without prepayment of fees “but a person who submits an affidavit that includes a statement of all assets such person . . . possesses [and] that the person is unable to pay such fees or give security therefor.” 28 U.S.C. § 1915(a). The Court has reviewed the application and finds Plaintiff satisfies the requirements of 28 U.S.C. § 1915(a). Therefore, Plaintiff’s motion to proceed *in forma pauperis* is **GRANTED**.

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). A plaintiff’s claim
6 is frivolous “when the facts alleged rise to the level of the irrational or the wholly incredible, whether or
7 not there are judicially noticeable facts available to contradict them.” *Denton v. Hernandez*, 504 U.S.
8 25, 32-33 (1992).

9 **III. Pleading Standards**

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

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

19 Rule 8 does not require detailed factual allegations, but it demands more than an
20 unadorned, the-defendant-unlawfully-harmed-me accusation. A pleading that offers
21 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.

22 *Ashcroft v. Iqbal*, 556 U.S. 662, 678-79 (2009) (internal quotation marks and citations omitted).

23 Conclusory and vague allegations do not support a cause of action. *Ivey v. Board of Regents*, 673 F.2d
24 266, 268 (9th Cir. 1982). The Court clarified further,

25 [A] complaint must contain sufficient factual matter, accepted as true, to “state a claim
26 to relief that is plausible on its face.” [Citation]. A claim has facial plausibility when
27 the plaintiff pleads factual content that allows the court to draw the reasonable
28 inference that the defendant is liable for the misconduct alleged. [Citation]. The
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.’”

1 *Iqbal*, 556 U.S. at 679 (citations omitted). When factual allegations are well-pled, a court should
2 assume the truth and determine whether the facts would make the plaintiff entitled to relief; conclusions
3 in the pleading are not entitled to the same assumption of truth. *Id.* The Court may grant leave to
4 amend a complaint to the extent deficiencies of the complaint can be cured by amendment. *Lopez v.*
5 *Smith*, 203 F.3d 1122, 1127-28 (9th Cir. 2000) (en banc).

6 **IV. Discussion and Analysis**

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

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

19 *Id.* (emphasis added). Except as provided by statute, “[n]o findings of fact or decision of the
20 Commissioner shall be reviewed by any person, tribunal, or governmental agency.” 42 U.S.C. § 405(h).

21 The Supreme Court noted the purpose of the legislation was “to forestall repetitive or belated
22 litigation of stale eligibility claims.” *Califano v. Sanders*, 430 U.S. 99, 108 (1977). Thus, these
23 regulations “operate as a statute of limitations setting the time period in which a claimant may appeal a
24 final decision of the Commissioner.” *Berrigan v. Astrue*, 2010 U.S. Dist. LEXIS 115390, at *4-5
25 (E.D. Cal. Oct. 29, 2010) (citing *Bowen v. City of New York*, 476 U.S. 467, 479 (1986); *Matthews v.*
26 *Eldridge*, 424 U.S. 319, 328 n. 9 (1976)). The time limit is a condition on the waiver of sovereign
27 immunity, and it must be strictly construed. *Id.*

28 Here, Plaintiff alleges *only* that she “seeks judicial review pursuant to 42 U.S.C. 405(g) of an
adverse decision of the defendant which has become final,” and she “has exhausted administrative
remedies.” (Doc. 1 at 1-2.) Plaintiff does not allege when the administrative law judge issued a
decision on her application for benefits; if or when the Appeals Council denied a request for review; or

1 when the administrative decision became final. Without further information, the Court is unable to
2 find that Plaintiff's request for judicial review was timely, or that the Court has jurisdiction pursuant to
3 42 U.S.C. § 405(g).

4 **V. Leave to Amend the Complaint**

5 A complaint should only be dismissed for failure to state a claim upon which relief may be
6 granted if it appears beyond doubt that the Plaintiff can prove no set of facts, consistent with the
7 allegations, that would entitle her to relief. *See Hishon v. King & Spalding*, 467 U.S. 69, 73 (1984)
8 (citing *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957)). Here the Court cannot find with certainty that
9 Plaintiff cannot allege facts supporting a finding that the Court has jurisdiction over the matter. The
10 Court will grant Plaintiff leave to amend the complaint to cure the deficiencies of this complaint by
11 stating the necessary information regarding when the decision of the Commissioner became final.

12 Generally, an amended complaint supersedes the original complaint. *See Loux v. Rhay*, 375
13 F.2d 55, 57 (9th Cir. 1967). Thus, once Plaintiff files an amended complaint, the original pleading no
14 longer serves any function in the case. The amended complaint must bear the docket number assigned
15 this case and must be labeled "First Amended Complaint." Failure to file an amended complaint in
16 accordance with this order will be considered to be a failure to comply with an order of the Court
17 pursuant to Local Rule 110 and will result in dismissal of this action.

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

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

24
25 IT IS SO ORDERED.

26 Dated: February 17, 2015

/s/ Jennifer L. Thurston
UNITED STATES MAGISTRATE JUDGE

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