

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.*

17 **III. Discussion and Analysis**

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

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

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

1 “operate as a statute of limitations setting the time period in which a claimant may appeal a final
2 decision of the Commissioner.” *Cogburn v. Astrue*, 2013 U.S. Dist. LEXIS 152351, at * 5 (E.D. Cal.
3 Oct. 29, 2010) (citing *Bowen v. City of New York*, 476 U.S. 467, 479 (1986); *Vernon v. Heckler*, 811
4 F.2d 1274, 1277 (9th Cir.1987)). The time limit is a condition on the waiver of sovereign immunity,
5 and it must be strictly construed. *Id.*

6 According to Plaintiff, the Appeals Council denied her request for review of the decision
7 rendered by an administrative law judge on December 12, 2015. (Doc. 6 at 2.) Therefore, Plaintiff’s
8 request for judicial review of the decision is timely, and the Court has jurisdiction over the complaint
9 pursuant to 42 U.S.C. § 405(g).

10 **IV. Conclusion and Order**

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

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

- 14 1. The Clerk of Court is DIRECTED to issue summons as to the defendant, Carolyn
15 Colvin, Acting Commissioner of Social Security;
- 16 2. The Clerk of Court is DIRECTED to issue and serve Plaintiff with Social Security Case
17 Documents, including the Scheduling Order, Order regarding Consent, the Consent
18 Form, and USM-285 Forms;
- 19 3. Plaintiff **SHALL** complete and submit to the Court the “Notice of Submission of
20 Documents in Social Security Appeal Form;” and
- 21 4. The U.S. Marshal is DIRECTED to serve a copy of the First Amended Complaint
22 (Doc. 6), summons, and this order upon the defendant as directed by Plaintiff in the
23 USM Forms.

24
25 IT IS SO ORDERED.

26 Dated: March 5, 2015

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