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

ANTHONY LEE TAYLOR,)	Case No.: 1:15-cv-00371- --- - JLT
Plaintiff,)	
)	ORDER DIRECTING THE CLERK OF COURT TO
)	ASSIGN A UNITED STATES DISTRICT JUDGE
)	TO THE ACTION
v.)	
)	FINDINGS AND RECOMMENDATIONS
COMMISSIONER OF SOCIAL SECURITY,)	DENYING PLAINTIFF’S MOTIONS TO
Defendant.)	PROCEED IN FORMA PAUPERIS AND
)	DISMISSING PLAINTIFF’S COMPLAINT
)	WITHOUT LEAVE TO AMEND

Plaintiff Anthony Lee Taylor seeks to proceed *in forma pauperis* with an action for judicial review of the administrative decision denying his 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 March 9, 2015. For the following reasons, the Court recommends Plaintiff’s motion to proceed in forma pauperis be **DENIED** and the complaint be **DISMISSED** without leave to amend.

I. Motion to Proceed In Forma Pauperis

As a general rule, all parties instituting any civil action, suit or proceeding in a United States District Court must pay a filing fee. 28 U.S.C. § 1914(a). However, the Court may authorize the initiation of an action “without prepayment of fees and costs of security therefor, by a person who submits an affidavit that . . . the person is unable to pay such fees or give security therefor.” 28 U.S.C.

1 § 1915(a)(1). Thus, an action may proceed without payment of the filing fee only if leave to proceed in
2 forma pauperis is granted by the Court. *See Rodriguez v. Cook*, 169 F.3d 1178, 1177 (9th Cir. 1999).

3 The Ninth Circuit has held “permission to proceed in forma pauperis is itself a matter of
4 privilege and not a right; denial of an informa pauperis status does not violate the applicant’s right to
5 due process.” *Franklin v. Murphy*, 745 F.2d 1221, 1231 (9th Cir. 1984) (citing *Weller v. Dickson*, 314
6 F.2d 598, 600 (9th Cir. 1963)). The Court has broad discretion to grant or deny a motion to proceed in
7 forma pauperis. *O’Loughlin v. Doe*, 920 F.2d 614, 616 (9th Cir. 1990); *Weller*, 314 F.2d at 600-01. In
8 making a determination, the Court “must be careful to avoid construing the statute so narrowly that a
9 litigant is presented with a Hobson’s choice between eschewing a potentially meritorious claim or
10 foregoing life’s plain necessities.” *Temple v. Ellerthorpe*, 586 F.Supp. 848, 850 (D.R.I. 1984).

11 Here, the Court recommends the motions to proceed *in forma pauperis* be denied because, as
12 discussed below, Plaintiff fails to state a cognizable claim upon which relief may be granted by the
13 Court. *See* 28 U.S.C. § 1915(e)(2).

14 **II. Screening Requirement**

15 When an individual seeks to proceed in forma pauperis, the Court is required to review the
16 complaint and identify “cognizable claims.” *See* 28 U.S.C § 1915(a)-(b). The Court must dismiss a
17 complaint, or portion of the complaint, if it is “frivolous, malicious or fails to state a claim upon which
18 relief may be granted; or . . . seeks monetary relief from a defendant who is immune from such relief.”
19 28 U.S.C. § 1915A(b); 28 U.S.C. § 1915(e)(2). A claim is frivolous “when the facts alleged rise to the
20 level of the irrational or the wholly incredible, whether or not there are judicially noticeable facts
21 available to contradict them.” *Denton v. Hernandez*, 504 U.S. 25, 32-33 (1992).

22 **III. Pleading Standards**

23 General rules for pleading complaints are governed by the Federal Rules of Civil Procedure. A
24 pleading stating a claim for relief must include a statement affirming the court’s jurisdiction, “a short
25 and plain statement of the claim showing the pleader is entitled to relief; and ... a demand for the relief
26 sought, which may include relief in the alternative or different types of relief.” Fed. R. Civ. P. 8(a).
27 The Federal Rules adopt a flexible pleading policy, and *pro se* pleadings are held to “less stringent
28 standards” than pleadings by attorneys. *Haines v. Kerner*, 404 U.S. 519, 521-21 (1972).

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

5 Rule 8 does not require detailed factual allegations, but it demands more than an
6 unadorned, the-defendant-unlawfully-harmed-me accusation. A pleading that offers
7 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.

8 *Ashcroft v. Iqbal*, 556 U.S. 662, 678-79 (2009) (internal quotation marks and citations omitted).
9 Conclusory and vague allegations do not support a cause of action. *Ivey v. Board of Regents*, 673 F.2d
10 266, 268 (9th Cir. 1982). The Court clarified further,

11 [A] complaint must contain sufficient factual matter, accepted as true, to “state a claim
12 to relief that is plausible on its face.” [Citation]. A claim has facial plausibility when
the plaintiff pleads factual content that allows the court to draw the reasonable
13 inference that the defendant is liable for the misconduct alleged. [Citation]. The
14 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
15 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.’”

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

21 **IV. Discussion and Analysis**

22 Plaintiff asserts that he an application for Social Security benefits in 2008, which was denied by
23 the Social Security Administration (“SSA”). (Doc. 1 at 1-2.) Plaintiff requested judicial review of the
24 decision by this Court, and while that action was pending, he filed a second application for benefits
25 “circa 2010.”¹ (*Id.* at 2.) Plaintiff’s second application was denied at the initial level. (*Id.*) He alleges
26 that he filed a request for reconsideration of the claim on March 15, 2013, and his “representative was
27

28 ¹ An exhibit to the Complaint indicates Plaintiff’s second application was dated January 27, 2011. (Doc. 1 at 11.)

1 informed by SSA employees that [the] SSA had lost Mr. Taylor’s Request for Reconsideration.” (*Id.* at
2 2, 4.) Therefore, Plaintiff filed this action, requesting that the Court “[r]everse the initial decision of the
3 defendant, and “[f]ind that plaintiff is entitled to SSI disability benefits....” or remand the action to the
4 Administration for further proceedings. (*Id.* at 3.)

5 Importantly, the district court is a court of limited jurisdiction, and is empowered only to hear
6 disputes “authorized by Constitution and statute.” *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S.
7 375, 377 (1994); *Exxon Mobil Corp v. Allapattah Servs., Inc.*, 545 U.S. 546, 552 (2005). The Court has
8 jurisdiction to review a final decision of the Commissioner of Social Security pursuant to 42 U.S.C.
9 §405(g), which provides 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
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.

15 *Id.* (emphasis added). Except as provided by statute, “[n]o findings of fact or decision of the
16 Commissioner shall be reviewed by any person, tribunal, or governmental agency.” 42 U.S.C. § 405(h).
17 The Supreme Court noted the purpose of the legislation was “to forestall repetitive or belated litigation
18 of stale eligibility claims.” *Califano v. Sanders*, 430 U.S. 99, 108 (1977). These regulations operate as
19 a statute of limitations for claimant to appeal a final decision of the Commissioner. *Bowen v. City of*
20 *New York*, 476 U.S. 467, 479 (1986)); *Banta v. Sullivan*, 925 F.2d 343, 243 (9th Cir. 1991) (“the sixty-
21 day time limit is not jurisdictional, but is instead a statute of limitation”).

22 This statute of limitation “must be strictly construed.” *Bowen*, 476 U.S. at 479; *see also*
23 *Fletcher v. Apfel*, 210 F.3d 510 (5th Cir.2000) (affirming summary judgment in favor of the
24 Commissioner where the claimant sought review one day after the statute of limitations had expired).
25 Although the sixty-day time limit may be waived, *Weinberger v. Salfi*, 422 U.S. 749, 763-64 (1975),
26 Plaintiff does not allege facts supporting a waiver. Moreover, Plaintiff fails to allege facts that support
27 equitable tolling of the claim for approximately several years, such that “deference to the agency’s
28 judgment is inappropriate.” *Bowen* , 476 U.S. at 480 (citation omitted).

1 **V. Order**

2 Plaintiff failed to seek review of the decision to deny his application for benefits within the
3 timeframe permitted by statute. Good cause appearing, the Clerk of Court is **DIRECTED** to assign a
4 United States District Judge to this action.

5 **VI. Findings and Recommendations**

6 Based upon the foregoing, **IT IS HEREBY RECOMMENDED:**

- 7 1. Plaintiff's request to proceed *in forma pauperis* (Doc. 2) be **DENIED**;
8 2. Plaintiff's Complaint be **DISMISSED WITHOUT LEAVE TO AMEND**; and
9 3. The Clerk of Court be **DIRECTED** to close the action.

10 These findings and recommendations are submitted to the United States District Judge assigned
11 to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and Rule 304 of the Local Rules of
12 Practice for the United States District Court, Eastern District of California. Within fourteen days after
13 being served with these findings and recommendations, Plaintiff may file written objections with the
14 Court. The document should be captioned "Objections to Magistrate Judge's Findings and
15 Recommendations." Plaintiff is advised that failure to file objections within the specified time may
16 waive the right to appeal the District Court's order. *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991);
17 *Wilkerson v. Wheeler*, 772 F.3d 834, 834 (9th Cir. 2014).

18
19 IT IS SO ORDERED.

20 Dated: April 7, 2015

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