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8 **UNITED STATES DISTRICT COURT**
9 **EASTERN DISTRICT OF CALIFORNIA**
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11 MICHAEL ANTHONY CORDOVA,) Case No.: 1:15-cv-00869 - JLT
12 Plaintiff,)
13 v.) ORDER GRANTING PLAINTIFF’S MOTIONS TO
14 CAROLYN W. COLVIN,) PROCEED IN FORMA PAUPERIS
15 Acting Commissioner of Social Security,) (Docs. 2,4)
16 Defendant.) ORDER DISMISSING COMPLAINT WITH
17) LEAVE TO AMEND
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18 Plaintiff Michael Anthony Cordova seeks to proceed *pro se* and *in forma pauperis* with this
19 action for judicial review of the administrative decision to deny his application for Social Security
20 benefits. For the following reasons, the request to proceed *in forma pauperis* is **GRANTED**, and the
21 complaint **DISMISSED with leave to amend**.

22 **I. Proceeding in forma pauperis**

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

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II. Screening Requirement

When an individual is proceeding *in forma pauperis*, the Court is required to review the complaint, and shall dismiss the case at any time if the Court determines that the allegation of poverty is untrue, or the action or appeal is “frivolous, malicious or fails to state a claim on which relief may be granted; or . . . seeks monetary relief against a defendant who is immune from such relief.” 28 U.S.C. 1915(e)(2). In addition, the Court may dismiss an action *sua sponte* if it lacks jurisdiction over the matter. *Fielder v. Clark*, 714 F.2d 77, 78-79 (9th Cir. 1983).

III. Pleading Standards

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

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

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

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

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

[A] complaint must contain sufficient factual matter, accepted as true, to “state a claim 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 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. When the factual allegations are well-pled, a court should assume their truth
2 and determine whether the facts would make the plaintiff entitled to relief; conclusions in the pleading
3 are not entitled to the same assumption of truth. *Id.* If the Court determines that the complaint fails to
4 state a cognizable claim, the Court may grant leave to amend to the extent that deficiencies of the
5 complaint can be cured by an amendment. *Lopez v. Smith*, 203 F.3d 1122, 1127-28 (9th Cir. 2000).

6 **IV. Jurisdiction**

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.

16 *Id.* (emphasis added).

17 Except as provided by statute, “[n]o findings of fact or decision of the Commissioner shall be
18 reviewed by any person, tribunal, or governmental agency.” 42 U.S.C. § 405(h). The Supreme Court
19 noted the purpose of the legislation was “to forestall repetitive or belated litigation of stale eligibility
20 claims.” *Califano v. Sanders*, 430 U.S. 99, 108 (1977). Thus the regulations operate as a statute of
21 limitations a claimant to appeal a final decision of the Commissioner. *Bowen v. City of New York*, 476
22 U.S. 467, 479 (1986); *Matthews v. Eldridge*, 424 U.S. 319, 328 n. 9 (1976)). Because the time limit is
23 “a condition on the waiver of sovereign immunity,” it “must be strictly construed.” *Id.*

24 **V. Discussion and Analysis**

25 Plaintiff alleges that he “has exhausted administrative remedies in this matter.” (Doc. 1 at 2.)
26 However, there are no facts to support his conclusion, such as when Plaintiff requested review by the
27 Appeals Council. Further, there is no information regarding when the decision of the administrative
28 law judge became the “final decision” of the Commissioner. Without such information, the Court is

1 unable to determine whether the statute of limitations has run on the request for review, or whether the
2 Court has jurisdiction pursuant to 42 U.S.C. § 405(g).

3 **VI. Leave to Amend the Complaint**

4 If the Court determines that a complaint fails to state a claim, leave to amend should be granted
5 to the extent that the deficiencies of the complaint can be cured by amendment. *Lopez v. Smith*, 203
6 F.3d 1122, 1130 (9th Cir. 2000) (en banc). A complaint, or a portion thereof, should only be
7 dismissed for failure to state a claim upon which relief may be granted if it appears beyond doubt that
8 the Plaintiff can prove no set of facts, consistent with the allegations, in support of the claim or claims
9 that would entitle him to relief. *See Hishon v. King & Spalding*, 467 U.S. 69, 73 (1984), citing *Conley*
10 *v. Gibson*, 355 U.S. 41, 45-46 (1957); *see also Palmer v. Roosevelt Lake Log Owners' Ass'n., Inc.*,
11 651 F.2d 1289, 1294 (9th Cir. 1981).

12 The Court is not certain whether Plaintiff can allege facts that indicate the Court has
13 jurisdiction over the matter. Thus, the Court will grant Plaintiff leave to amend the complaint to cure
14 the deficiencies of this complaint by stating whether he requested review by the Appeals Council and,
15 if so, when the Appeals Council ruled upon his request. Failure to cure the deficiencies will result in a
16 recommendation that the matter be dismissed. The amended complaint must bear the docket number
17 assigned this case and must be labeled "First Amended Complaint."

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

- 19 1. Plaintiff's motions to proceed *in forma pauperis* (Docs. 2, 4) are **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.

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24 IT IS SO ORDERED.

25 Dated: July 1, 2015

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