

1
2
3
4
5
6
7
8 **UNITED STATES DISTRICT COURT**
9 **EASTERN DISTRICT OF CALIFORNIA**
10

11 CHRISTOPHER JAMES CASTANEDA,) Case No.: 1:15-cv-00889 - JLT
12 Plaintiff,)
13 v.) ORDER GRANTING PLAINTIFF’S MOTION TO
14 CAROLYN W. COLVIN,) PROCEED IN FORMA PAUPERIS
Acting Commissioner of Social Security,) (Doc. 2)
15 Defendant.) ORDER DISMISSING COMPLAINT WITH
16) LEAVE TO AMEND
17)

18 Plaintiff Christopher James Castaneda seeks to proceed *in forma pauperis* with this action for
19 judicial review of the administrative decision to deny his application for benefits arising under Title II
20 of the Social Security Act. For the following reasons, the motion to proceed *in forma pauperis* (Doc. 2)
21 is **GRANTED**, and the 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 application and has determined Plaintiff satisfies the requirements of 28 U.S.C. §
27 1915(a). Therefore, the motion to proceed *in forma pauperis* is **GRANTED**.

28 ///

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 According to Plaintiff, the Appeals Council denied his request for review of the decision
26 rendered by the administrative law judge on March 27, 2015, at which time the decision became the
27 final decision of the Commissioner. (Doc. 1 at 2.) Therefore, Plaintiff’s request for review would be
28 due within sixty five days of the date of Appeal’s Council’s notice, or no later than May 31, 2015. *See*

1 42 U.S.C. §405(g) (noting that a claimant is “presumed” to have received the notice of denial within
2 “5 days after the date of such notice”). However, Plaintiff did not initiate this action until June 10,
3 2015. Thus, it appears the statute of limitations may have run on the request for review. *See, e.g.,*
4 *Fletcher v. Apfel*, 210 F.3d 510 (5th Cir. 2000) (affirming judgment in favor of Commissioner where
5 the claimant missed the statute of limitations by one day).

6 On the other hand, there are two exceptions to the statute of limitations: (1) the Commissioner
7 may grant an extension of time to file a civil action, and (2) the statute of limitations may be tolled
8 through the doctrine of “equitable tolling.” *Bowen*, 476 U.S. at 479-80; 42 U.S.C. § 405(g). Here,
9 however, Plaintiff does not allege that he requested an extension of time, and does not allege any facts
10 that would support the equitable tolling of the statute of limitations. Therefore, from the face of
11 Plaintiff’s complaint, it does not appear the Court has jurisdiction over the matter.

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

13 If the Court determines that a complaint fails to state a claim, leave to amend should be granted
14 to the extent that the deficiencies of the complaint can be cured by amendment. *Lopez v. Smith*, 203
15 F.3d 1122, 1130 (9th Cir. 2000) (en banc). A complaint, or a portion thereof, should only be
16 dismissed for failure to state a claim upon which relief may be granted if it appears beyond doubt that
17 the Plaintiff can prove no set of facts, consistent with the allegations, in support of the claim or claims
18 that would entitle him to relief. *See Hishon v. King & Spalding*, 467 U.S. 69, 73 (1984), citing *Conley*
19 *v. Gibson*, 355 U.S. 41, 45-46 (1957); *see also Palmer v. Roosevelt Lake Log Owners’ Ass’n., Inc.*,
20 651 F.2d 1289, 1294 (9th Cir. 1981).

21 Here the Court cannot find with certainty that Plaintiff cannot allege facts supporting a
22 determination that the Court has jurisdiction over the matter. The Court will grant Plaintiff leave to
23 amend the complaint to cure the deficiencies of this complaint by stating whether he requested an
24 extension of time from the Appeals Council or, in the alternative, to allege facts that support the
25 tolling of the statute of limitations. Failure to cure the deficiencies will result in a recommendation
26 that the matter be dismissed. The amended complaint must bear the docket number assigned this case
27 and must be labeled “First Amended Complaint.”

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Accordingly, **IT IS HEREBY ORDERED:**

1. Plaintiff's motion to proceed *in forma pauperis* (Doc. 2) is **GRANTED**;
2. Plaintiff's complaint **IS DISMISSED** with leave to amend; and
3. Plaintiff is **GRANTED** 14 days from the date of service of this order to file an amended complaint that complies with the requirements of the pertinent substantive law, the Federal Rules of Civil Procedure, and the Local Rules of Practice.

IT IS SO ORDERED.

Dated: June 17, 2015

/s/ Jennifer L. Thurston
UNITED STATES MAGISTRATE JUDGE