



1 *Humana, Inc.*, 114 F.3d 1467, 1474 (9th Cir. 1997); *King v. Atiyeh*, 814 F.2d 565, 567 (9th Cir. 1987).

2 **II. Pleading Standards**

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

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

12 Rule 8 does not require detailed factual allegations, but it demands more than an  
13 unadorned, the-defendant-unlawfully-harmed-me accusation. A pleading that offers  
14 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.

15 *Ashcroft v. Iqbal*, 556 U.S. 662, 678-79 (2009) (internal quotation marks and citations omitted). Vague  
16 and conclusory allegations do not support a cause of action. *Ivey v. Board of Regents*, 673 F.2d 266,  
17 268 (9th Cir. 1982). The Court clarified further,

18 [A] complaint must contain sufficient factual matter, accepted as true, to “state a claim  
19 to relief that is plausible on its face.” [Citation]. A claim has facial plausibility when  
20 the plaintiff pleads factual content that allows the court to draw the reasonable  
21 inference that the defendant is liable for the misconduct alleged. [Citation]. The  
22 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.’

23 *Iqbal*, 556 U.S. at 679 (citations omitted). When factual allegations are well-pled, a court should  
24 assume their truth and determine whether the facts would make the plaintiff entitled to relief; legal  
25 conclusions are not entitled to the same assumption of truth. *Id.* The Court may grant leave to amend a  
26 complaint to the extent deficiencies of the complaint can be cured by an amendment. *Lopez v. Smith*,  
27 203 F.3d 1122, 1127-28 (9th Cir. 2000) (en banc).

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1 **III. Discussion and Analysis**

2 Plaintiff requests that the Court “review a decision by the Commissioner of the Social Security  
3 Administration denying Plaintiff’s applications for Social Security Disability Insurance benefits and  
4 Supplemental Security Income payments.” (Doc. 5 at 1) The Court may jurisdiction pursuant to 42  
5 U.S.C. § 405(g), which provides in relevant part:

6 Any individual, after any final decision of the Commissioner made after a hearing to  
7 which he was a party, irrespective of the amount in controversy, may obtain a review of  
8 such decision by a civil action commenced **within sixty days after the mailing to him**  
9 **of such decision or within such further time as the Commissioner may allow.** Such  
10 action shall be brought in the district court of the United States for the judicial district  
11 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.

12 *Id.* (emphasis added). Except as provided by statute, “[n]o findings of fact or decision of the  
13 Commissioner shall be reviewed by any person, tribunal, or governmental agency.” 42 U.S.C. § 405(h).  
14 These regulations “operate as a statute of limitations setting the time period in which a claimant may  
15 appeal a final decision of the Commissioner.” *Berrigan v. Astrue*, 2010 U.S. Dist. LEXIS 115390, at  
16 \*4-5 (E.D. Cal. Oct. 29, 2010) (citing *Bowen v. City of New York*, 476 U.S. 467, 479 (1986); *Matthews*  
17 *v. Eldridge*, 424 U.S. 319, 328 n. 9 (1976)). The time limit is a condition on the waiver of sovereign  
18 immunity, and it must be strictly construed. *Id.*

19 Here, Plaintiff alleges the administrative law judge issued a decision on January 15, 2014, and  
20 the Appeals Council denied his request for review of the decision on March 19, 2015. (Doc. 5 at 2)  
21 Plaintiff alleges he requested an extension of time to file an action, which was granted by the Appeals  
22 Council on December 10, 2015. (*Id.*) However, Plaintiff fails to allege the duration of the extension,  
23 or the number of days he had to file the action. Without such information, the Court is unable to  
24 determine whether the action is timely, or whether the Court has jurisdiction over the matter pursuant  
25 to 42 U.S.C. § 405(g).

26 **IV. Leave to Amend the Complaint**

27 Leave to amend should be granted to the extent that the deficiencies of the complaint can be  
28 cured by amendment. *Lopez v. Smith*, 203 F.3d 1122, 1130 (9th Cir. 2000) (en banc). Here, Plaintiff

1 may be able to allege facts supporting a finding that the Court has jurisdiction over the matter. The  
2 Court will grant Plaintiff leave to amend the complaint to cure the factual deficiencies of this complaint  
3 by stating the necessary information, including the duration of the extension granted by the Appeals  
4 Council.

5 The amended complaint must bear the docket number assigned this case and must be labeled  
6 “Second Amended Complaint.”

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

- 8 1. Plaintiff’s First Amended Complaint **IS DISMISSED** with leave to amend; and
- 9 2. Plaintiff is **GRANTED** 21 days from the date of service of this order to file a Second  
10 Amended Complaint that complies with the requirements of the pertinent substantive  
11 law, the Federal Rules of Civil Procedure, and the Local Rules of Practice.

12  
13 IT IS SO ORDERED.

14 Dated: February 8, 2016

/s/ Jennifer L. Thurston  
UNITED STATES MAGISTRATE JUDGE