

1 **II. Screening Requirement**

2 When an individual seeks to proceed *in forma pauperis*, the Court is required to review the
3 complaint and shall dismiss a complaint, or portion of the complaint, if it is “frivolous, malicious or
4 fails to state a claim upon which relief may be granted; or . . . seeks monetary relief from a defendant
5 who is immune from such relief.” 28 U.S.C. § 1915A(b); 28 U.S.C. § 1915(e)(2). A plaintiff’s claim
6 is frivolous “when the facts alleged rise to the level of the irrational or the wholly incredible, whether or
7 not there are judicially noticeable facts available to contradict them.” *Denton v. Hernandez*, 504 U.S.
8 25, 32-33 (1992).

9 **III. Pleading Standards**

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

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

19 Rule 8 does not require detailed factual allegations, but it demands more than an
20 unadorned, the-defendant-unlawfully-harmed-me accusation. A pleading that offers
21 labels and conclusions or a formulaic recitation of the elements of a cause of action will
22 not do. Nor does a complaint suffice if it tenders naked assertions devoid of further
23 factual enhancement.
24 *Ashcroft v. Iqbal*, 556 U.S. 662, 678-79 (2009) (internal quotation marks and citations omitted). Vague
25 and conclusory allegations do not support a cause of action. *Ivey v. Board of Regents*, 673 F.2d 266,
26 268 (9th Cir. 1982). The Court clarified further,

27 [A] complaint must contain sufficient factual matter, accepted as true, to “state a claim
28 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

1 pleads facts that are “merely consistent with” a defendant’s liability, it “stops short of
2 the line between possibility and plausibility of ‘entitlement to relief.’

3 *Iqbal*, 556 U.S. at 679 (citations omitted). When factual allegations are well-pled, a court should
4 assume their truth and determine whether the facts would make the plaintiff entitled to relief; legal
5 conclusions are not entitled to the same assumption of truth. *Id.* The Court may grant leave to amend a
6 complaint to the extent deficiencies of the complaint can be cured by an amendment. *Lopez v. Smith*,
7 203 F.3d 1122, 1127-28 (9th Cir. 2000) (en banc).

8 **IV. Discussion and Analysis**

9 Plaintiff seeks review of a decision by the Commissioner of Social Security denying disability
10 benefits. (Doc. 1) The Court may have jurisdiction pursuant to 42 U.S.C. § 405(g), which provides in
11 relevant part:

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

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

23 Here, Plaintiff alleges that “[t]he issued a decision denying plaintiff’s claim for benefits on
24 December 1, 2015.” (Doc. 1 at 2) Significantly, the matter was before the ALJ pursuant to a remand
25 ordered by this Court in *Celedon v. Comm’r of Social Security*, Case No. 1:13-cv-00449-SMS.¹ If
26 claimant does not file an exception disagreeing with the ALJ and the Appeals Council does not assume
27 jurisdiction over the decision, the ALJ’s written decision is a “final decision of the Commissioner after
28

¹ Although Plaintiff fails to allege facts regarding her prior case, the Court’s records are subject to judicial notice. Specifically, judicial notice may be taken of a fact that “is not subject to reasonable dispute because it (1) is generally known within the trial court’s territorial jurisdiction; or (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.” Fed. R. Evid. 201; *see also United States v. Bernal-Obeso*, 989 F.2d 331, 333 (9th Cir. 1993). Because the records of court proceedings cannot reasonably be questioned, judicial notice may be taken of the records. *Mullis v. United States Bank. Ct.*, 828 F.2d 1385, 1388 n.9 (9th Cir. 1987); *Valerio v. Boise Cascade Corp.*, 80 F.R.D. 626, 635 n. 1 (N.D.Cal.1978), *aff’d*, 645 F.2d 699 (9th Cir. 1981); *see also Rodic v. Thistledown Racing Club, Inc.*, 615 F.2d 736, 738 (6th. Cir. 1980). Thus, the Court takes judicial notice of Plaintiff’s prior request for judicial review of her application for Social Security benefits, and the remand ordered by the Court in Case No. 1:13-cv-00449-SMS.

1 remand.” 20 C.F.R. §§ 404.984(d). Accordingly, the ALJ’s conclusion became the “final decision” on
2 January 30, 2016. *See* 20 C.F.R. §§ 404.984(b) (noting a decision becomes final 60 days after the
3 ALJ’s decision on remand). Therefore, Plaintiff’s request for review must have been filed no later than
4 April 4, 2016. Because Plaintiff filed a complaint on March 30, 2016 (Doc. 1), the request for judicial
5 review is timely, and the Court has jurisdiction over the matter pursuant to 42 U.S.C. § 405(g).

6 **V. Conclusion and Order**

7 Plaintiff’s complaint states a cognizable claim for review of the administrative decision denying
8 Social Security benefits. Based upon the foregoing, **IT IS HEREBY ORDERED:**

- 9 1. Plaintiff’s motion to proceed *in forma pauperis* (Doc. 2) is **GRANTED**;
- 10 2. The Clerk of Court is **DIRECTED** to issue summons as to the defendant, Carolyn
11 Colvin, Acting Commissioner of Social Security;
- 12 3. The Clerk of Court is **DIRECTED** to issue and serve Plaintiff with Social Security Case
13 Documents, including the Scheduling Order, Order regarding Consent, the Consent
14 Form, and USM-285 Forms; and
- 15 4. The U.S. Marshal is **DIRECTED** to serve a copy of the complaint, summons, and this
16 order upon the defendant as directed by Plaintiff in the USM Forms.

17
18 IT IS SO ORDERED.

19 Dated: April 1, 2016

/s/ Jennifer L. Thurston
UNITED STATES MAGISTRATE JUDGE