

1 amend may be granted to the extent that the deficiencies of the complaint can be cured by
2 amendment. *Cato v. United States*, 70 F.3d 1103, 1106 (9th Cir. 1995).

3 A complaint must contain “a short and plain statement of the claim showing that the
4 pleader is entitled to relief” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not
5 required, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere
6 conclusory statements, do not suffice.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Bell*
7 *Atlantic Corp. v. Twombly*, 550 U.S. 544, 555, 127 S.Ct. 1955, 1964-65 (2007)). Plaintiff must set
8 forth “sufficient factual matter, accepted as true, to ‘state a claim that is plausible on its face.’”
9 *Ashcroft v. Iqbal*, 556 U.S. at 663 (quoting *Twombly*, 550 U.S. at 555). While factual allegations
10 are accepted as true, legal conclusion are not. *Id.* at 678.

11 To determine whether a complaint states an actionable claim, the Court must accept the
12 allegations in the complaint as true, *Hospital Bldg. Co. v. Trustees of Rex Hospital*, 425 U.S. 738,
13 740 (1976), construe pro se pleadings liberally in the light most favorable to the Plaintiff, *Resnick*
14 *v. Hayes*, 213 F.3d 443, 447 (9th Cir. 2000), and resolve all doubts in the Plaintiff’s favor.
15 *Jenkins v. McKeithen*, 395 U.S. 411, 421 (1969). Pleadings of pro se plaintiffs “must be held to
16 less stringent standards than formal pleadings drafted by lawyers.” *Hebbe v. Pliler*, 627 F.3d 338,
17 342 (9th Cir. 2010) (holding that pro se complaints should continue to be liberally construed after
18 *Iqbal*).

19 **B. Plaintiff’s Allegations**

20 Although not entirely clear, Plaintiff’s complaint appears to be challenging a denial of his
21 Supplemental Security Income benefits (“SSI”). The complaint alleges that Plaintiff has applied
22 for benefits several times due to being overweight, pain in his back and knee, and difficulty
23 breathing. He also suffers from a urinary tract infection. Plaintiff contends his benefits were last
24 denied on March 13, 2015. He requests that this Court award him benefits.

25 **C. Analysis of Plaintiff’s Allegations**

26 **1. Rule 8(a)**

27 As Rule 8(a) states, a complaint must contain “a short and plain statement of the claim.”
28 The rule expresses the principle of notice-pleading, whereby the pleader need only give the

1 opposing party fair notice of a claim. *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957). Rule 8(a)
2 does not require an elaborate recitation of every fact a plaintiff may ultimately rely upon at trial,
3 but only a statement sufficient to “give the defendant fair notice of what the plaintiff’s claim is
4 and the grounds upon which it rests.” *Id.* at 47. As noted above, detailed factual allegations are
5 not required, but “[t]hreadbare recitals of the elements of a cause of action, supported by mere
6 conclusory statements, do not suffice.” *Ashcroft v. Iqbal*, 129 S.Ct. at 1949 (2009).

7 In this case, Plaintiff indicates he is appealing a denial of his application for SSI benefits,
8 but he has not provided any substantive reasons for doing so, nor has he identified any errors in
9 the decision. Plaintiff is advised that this Court has no jurisdiction to award Social Security
10 benefits. This Court only has jurisdiction to review an administrative law judge’s non-disability
11 finding. However, as outlined below, there are time requirements that must be met in order for
12 this Court to be able to hear Plaintiff’s case.

13 2. Timeliness of the Appeal

14 Judicial review of the Commissioner’s administrative decisions is governed by Section
15 405(g) and (h) of the Social Security Act, which reads in relevant part:

16 (g) Any individual, after any final decision of the Commissioner of Social Security
17 made after a hearing to which he was a party, irrespective of the amount in
18 controversy, **may obtain a review of such decision by a civil action commenced**
19 **within sixty days after the mailing to him of notice of such decision** or within such
20 further time as the Commissioner of Social Security may allow.

21 (h) The findings and decision of the Commissioner after a hearing shall be binding
22 upon all individuals who were parties to such hearing. No findings of facts or
23 decision of the Commissioner shall be reviewed by any person, tribunal, or
24 governmental agency except as herein provided. No action against the United
25 States, the Commissioner, or any officer or employee thereof shall be brought
26 under section 1331 or 1346 of Title 28 to recover on any claim arising under this
27 subchapter.

28 Section 405(g) and (h) therefore operates as a statute of limitations setting a sixty day time
period in which a claimant may appeal a final decision of the Commissioner. In addition to the
sixty day period noted above, Plaintiff must have exhausted his administrative remedies prior to
filing a case in this Court. Specifically, upon receiving his denial from an administrative law

1 judge, Plaintiff had sixty days to file an Appeal with the Appeals Council. 20 CFR §§ 404.967
2 and 404.968. When the Appeals Council reviews the case, it will either affirm, modify, or reject
3 the ALJ's recommendation. 20 CFR § 404.979. It may also remand the case. 20 CFR § 404.977.
4 The Appeals Council's decision is binding unless a party files an action in federal district court
5 within sixty days of the Appeals Council's decision. 20 CFR §§ 422.210 and 404.981.

6 Given the above, prior to filing an appeal in federal court, Plaintiff must establish that he
7 had a hearing before an administrative law judge, and that an appeal with the Appeals Council
8 was filed. Any complaint filed in this Court must be filed within sixty days of the Appeals
9 Council's decision. Plaintiff has failed to demonstrate that this was done in this instance. In fact,
10 he indicates that he was last denied benefits on March 13, 2015. It is unclear if this denial was
11 from the agency itself, an administrative law judge, or from the Appeals Council. In any event, it
12 appears the filing of this case occurred beyond the sixty day period, and that this Court lacks
13 jurisdiction to hear Plaintiff's case.

14 Plaintiff is advised that in certain rare circumstances, the doctrine of equitable tolling
15 allows a plaintiff to avoid the statute of limitations. *Supermail Cargo Inc. v. United States*, 68
16 F.3d at 1206. "Generally, a litigant seeking equitable tolling bears the burden of establishing two
17 elements: (1) that he has been pursuing his rights diligently, and (2) that some extraordinary
18 circumstances stood in his way." *Credit Suisse Sec. (USA) LLC v. Simmonds*, — U.S. —, 132
19 S.Ct. 1414, 1419 (2012) (quoting *Pace v. DiGuglielmo*, 544 U.S. 408, 418 (2005)) (emphasis
20 omitted). Equitable tolling is only warranted where "litigants are unable to file timely documents
21 as a result of external circumstances beyond their direct control." *Kwai Fun Wong v. Beebe*, 732
22 F.3d 1030, 1052 (9th Cir. 2013) (quoting *Harris v. Carter*, 515 F.3d 1051, 1055 (9th Cir. 2008))
23 (alterations and internal quotation marks omitted). "Generally, equitable circumstances that might
24 toll a limitation period involve conduct (by someone other than the claimant) that is misleading or
25 fraudulent." *Turner v. Bowen*, 862 F.2d 708, 710 (8th Cir. 1988). For example, in *Bowen v. City*
26 *of New York*, the court applied equitable tolling because plaintiffs were prevented from filing
27 because of "the Government's secretive conduct." *Bowen*, 476 U.S. at 481. Likewise, in *Vernon*,
28 the court reasoned that equitable tolling was appropriate because the plaintiff had allegedly been

1 told by an employee of the Social Security Administration that the deadline would be extended.
2 *Vernon*, 811 F.2d at 1275. In contrast, in *Turner v. Bowen*, 862 F.2d 708 (8th Cir. 1988), the
3 court did not find equitable tolling applicable because the plaintiff was not “unusually
4 disadvantaged in protecting his own interests” despite his being illiterate and unrepresented when
5 he received the letter from the Appeals Council denying his benefits and informing him of his
6 right to file a civil action. *Turner*, 862 F.2d at 709. Thus, equitable tolling only applies in very
7 rare circumstances.

8 Given the above, Plaintiff will be given an opportunity to amend the complaint to
9 establish that jurisdiction is proper. In any amended complaint, Plaintiff must establish that he
10 filed this case within sixty days of the Appeals Council denial of his benefits, or that equitable
11 tolling should apply to his case.

12 **3. Proper Defendant**

13 Plaintiff is advised that the Commissioner of Social Security, presently, is Carolyn Colvin,
14 and she is the proper defendant in an action challenging the denial of Social Security benefits. 42
15 U.S.C. § 405(g) (referring to the “Commissioner’s Answer”). *See also*, 20 CFR 422.210(d). As
16 such, Plaintiff shall properly name Carolyn Colvin, the Commissioner of Social Security, as the
17 defendant in any amended complaint.

18 **III. Conclusion and Order**

19 As set forth above, Plaintiff’s complaint does not state any claims upon which relief may
20 be granted, and it appears the Court lacks jurisdiction to hear Plaintiff’s case. However, if
21 Plaintiff believes that there are other facts that the Court should consider, he may file an amended
22 complaint no later than **October 30, 2016**. If Plaintiff chooses to file an amended complaint, he
23 must establish that this Court has jurisdiction. An amended complaint must bear the docket
24 number assigned in this case and be labeled “First Amended Complaint.” As a general rule, an
25 amended complaint supersedes any earlier complaints. *Lacey v. Maricopa Cnty.*, 693 F.3d 896
26 (9th Cir. 2012) (noting that there may be limited exceptions to this rule on appeal). In other
27 words, the amended complaint must be “complete in itself without reference to the prior or
28 superseded pleading.” Local Rule 220.

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Plaintiff is advised that failure to file a First Amended Complaint as ordered will result in dismissal of this action.

IT IS SO ORDERED.

Dated: September 23, 2016

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE