



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  
not do. Nor does a complaint suffice if it tenders naked assertions devoid of further  
factual enhancement.

22 *Ashcroft v. Iqbal*, 556 U.S. 662, 678-79 (2009) (internal quotation marks and citations omitted). Vague  
23 and conclusory allegations do not support a cause of action. *Ivey v. Board of Regents*, 673 F.2d 266,  
24 268 (9th Cir. 1982). The Court clarified further,

25 [A] complaint must contain sufficient factual matter, accepted as true, to “state a claim  
26 to relief that is plausible on its face.” [Citation]. A claim has facial plausibility when  
27 the plaintiff pleads factual content that allows the court to draw the reasonable  
28 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

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

7 **IV. Discussion and Analysis**

8 Plaintiff asserts she “applied for disability benefits” and was denied. (Doc. 1 at 2) Therefore,  
9 she is “respectfully asking the United States District Court for a court review.” (*Id.*) The Court may  
10 jurisdiction over Plaintiff’s disability applications 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 such decision or within such further time as the Commissioner may allow.** Such  
15 action shall be brought in the district court of the United States for the judicial district  
16 in which the plaintiff resides, or has his principal place of business . . . The court shall  
17 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.

18 *Id.* (emphasis added). Except as provided by statute, “[n]o findings of fact or decision of the  
19 Commissioner shall be reviewed by any person, tribunal, or governmental agency.” 42 U.S.C. § 405(h).  
20 These regulations “operate as a statute of limitations setting the time period in which a claimant may  
21 appeal a final decision of the Commissioner.” *Berrigan v. Astrue*, 2010 U.S. Dist. LEXIS 115390, at  
22 \*4-5 (E.D. Cal. Oct. 29, 2010) (citing *Bowen v. City of New York*, 476 U.S. 467, 479 (1986); *Matthews*  
23 *v. Eldridge*, 424 U.S. 319, 328 n. 9 (1976)). The time limit is a condition on the waiver of sovereign  
24 immunity, and it must be strictly construed. *Id.*

25 Plaintiff asserts that the administrative law judge issued an opinion on April 3, 2015 and that  
26 “SSDI has denied [her] request to review” that decision. (Doc. 1 at 2) However, Plaintiff fails to  
27 provide information such as whether her request for review by the Appeals Council was timely, or  
28 when the Appeals Council indicated it would not review the decision by the administrative law judge.

1 Without such information, the Court is unable to determine when a final decision was made on  
2 Plaintiff's application for benefits. Accordingly, it is unclear whether the Court has jurisdiction over  
3 the matter pursuant to 42 U.S.C. § 405(g).

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

5 Leave to amend should be granted to the extent that the deficiencies of the complaint can be  
6 cured by amendment. *Lopez v. Smith*, 203 F.3d 1122, 1130 (9th Cir. 2000) (en banc). Here the Court  
7 cannot find with certainty that Plaintiff cannot allege facts supporting a finding that the Court has  
8 jurisdiction over the matter. The Court will grant Plaintiff leave to amend the complaint to cure the  
9 factual deficiencies of this complaint by stating the necessary information, including when the Appeals  
10 Council responded to the request for review.

11 The amended complaint must bear the docket number assigned this case and must be labeled  
12 "First Amended Complaint."

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

- 14 1. Plaintiff's motion to proceed *in forma pauperis* (Doc. 2) is **GRANTED**;
- 15 2. Plaintiff's complaint **IS DISMISSED** with leave to amend; and
- 16 3. Plaintiff is **GRANTED** thirty (30) days from the date of service of this order to file an  
17 amended complaint that complies with the requirements of the pertinent substantive  
18 law, the Federal Rules of Civil Procedure, and the Local Rules of Practice.

19 **Plaintiff is advised that failure to file an amended complaint will be considered to be a failure to**  
20 **comply with a Court's order, and may result in dismissal of this action.**

21  
22 IT IS SO ORDERED.

23 Dated: October 3, 2016

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