

1 **II. Pleading Standards**

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

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

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

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

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

22 *Iqbal*, 556 U.S. at 679 (citations omitted). When factual allegations are well-pled, a court should
23 assume their truth and determine whether the facts would make the plaintiff entitled to relief; legal
24 conclusions are not entitled to the same assumption of truth. *Id.*

25 **III. Discussion and Analysis**

26 Plaintiff seeks review of a decision by the Commissioner of Social Security denying disability
27 benefits. (Doc. 4) The Court may have jurisdiction pursuant to 42 U.S.C. § 405(g), which provides in
28 relevant part:

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

6 *Id.* (emphasis added). Except as provided, “[n]o findings of fact or decision of the Commissioner shall
7 be reviewed by any person, tribunal, or governmental agency.” 42 U.S.C. § 405(h). These regulations
8 “operate as a statute of limitations setting the time period in which a claimant may appeal a final
9 decision of the Commissioner.” *Cogburn v. Astrue*, 2013 U.S. Dist. LEXIS 152351, at * 5 (E.D. Cal.
10 Oct. 29, 2010) (citing *Bowen v. City of New York*, 476 U.S. 467, 479 (1986); *Vernon v. Heckler*, 811
11 F.2d 1274, 1277 (9th Cir.1987)).

12 According to Plaintiff, the ALJ denied her application for benefits on May 27, 2015, after
13 which she filed a request for review by the Appeals Council. (Doc. 4 at 2) The Appeals Council
14 issued a notice denying her request on July 29, 2016. (*Id.*) Therefore, Plaintiff’s request for review
15 would be due 65 days of the date of Appeal’s Council’s notice, or no later than October 3, 2016. *See*
16 42 U.S.C. §405(g) (noting a claimant is “presumed” to have received the notice of denial within “5
17 days after the date of such notice”). Because Plaintiff initiated this action September 30, 2016, the
18 request for judicial review is timely, and the Court has jurisdiction over the matter pursuant to 42
19 U.S.C. § 405(g).

20 **IV. Conclusion and Order**

21 Plaintiff’s First Amended Complaint states a cognizable claim for judicial review of the
22 decision denying the request for Social Security benefits. Based upon the foregoing, the Court

23 **ORDERS:**

- 24 1. The Clerk of Court is **DIRECTED** to issue summons as to the defendant, Carolyn
25 Colvin, Acting Commissioner of Social Security;
- 26 2. The Clerk of Court is **DIRECTED** to issue and serve Plaintiff with Social Security
27 Case Documents, including the Scheduling Order, Order regarding Consent, the
28 Consent Form, and USM-285 Forms;

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- 3. Plaintiff **SHALL** complete and submit to the Court the “Notice of Submission of Documents in Social Security Appeal Form;” and
- 4. The U.S. Marshal is **DIRECTED** to serve a copy of the First Amended Complaint (Doc. 4), summons, and this order upon the defendant as directed in the USM Forms.

IT IS SO ORDERED.

Dated: October 26, 2016

/s/ Jennifer L. Thurston
UNITED STATES MAGISTRATE JUDGE