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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JOHNNIE LEE WALNER, <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> CAROLYN W. COLVIN, Acting Commissioner of Social Security, <p style="text-align: center;">Defendant.</p>)))))))))))))))	Case No.: 1:16-cv-01646 - JLT ORDER GRANTING PLAINTIFF’S MOTION TO PROCEED IN FORMA PAUPERIS (Doc. 2) ORDER DISMISSING COMPLAINT WITH LEAVE TO AMEND
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Johnnie Lee Walker seeks to proceed *pro se* and *in forma pauperis* with an action seeking judicial review of a decision rendered by the Social Security Administration to deny an application for benefits. (Docs. 1-2) For the reasons set forth below, Plaintiff’s motion to proceed *in forma pauperis* is **GRANTED**, and his complaint is **DISMISSED** with leave to amend.

I. Proceeding in forma pauperis

The Court may authorize the commencement of an action without prepayment of fees “by a person who submits an affidavit that includes a statement of all assets such person . . . possesses [and] that the person is unable to pay such fees or give security therefor.” 28 U.S.C. § 1915(a). The Court reviewed the application and finds Plaintiff satisfies the requirements of 28 U.S.C. § 1915(a). Therefore, Plaintiff’s motion to proceed *in forma pauperis* is **GRANTED**.

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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 he is seeking “a court review of the decision by the administrative law judge”
9 to deny his application for Social Security benefits. (Doc. 1 at 6) The Court may jurisdiction pursuant
10 to 42 U.S.C. § 405(g), which provides in relevant part:

11 Any individual, after any final decision of the Commissioner made after a hearing to
12 which he was a party, irrespective of the amount in controversy, may obtain a review of
13 such decision by a civil action commenced **within sixty days after the mailing to him**
14 **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
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.

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

24 Plaintiff has not provided any information regarding when a decision was made in on the
25 application for benefits, including whether Plaintiff appealed the initial decision issued by the Social
26 Security Administration, whether he requested a hearing by an administrative law judge, or whether he
27 requested review of the decision by the Appeals Council. Without such information, the Court is
28 unable to determine if, or when, a final decision was made on Plaintiff’s application for benefits, and

1 whether Plaintiff has exhausted his administrative remedies. Accordingly, it is unclear whether the
2 Court has jurisdiction over the matter pursuant to 42 U.S.C. § 405(g).

3 **V. Leave to Amend the Complaint**

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

11 The amended complaint must bear the docket number assigned this case and must be labeled
12 “First Amended Complaint.” Accordingly, the Court **ORDERS**:

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

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

20
21 IT IS SO ORDERED.

22 Dated: November 7, 2016

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