



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 a defendant fair notice of the claims against him, and the grounds  
9 upon which the action stands. *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 512 (2002). The Supreme  
10 Court noted: “A pleading that offers labels and conclusions or a formulaic recitation of the elements of  
11 a cause of action will not do. Nor does a complaint suffice if it tenders naked assertions devoid of  
12 further factual enhancement.” *Ashcroft v. Iqbal*, 556 U.S. 662, 677 (2009) (internal quotation marks,  
13 citations omitted). Conclusory and vague allegations do not support a cause of action. *Ivey v. Board of*  
14 *Regents*, 673 F.2d 266, 268 (9th Cir. 1982). When factual allegations are well-pled, a court should  
15 assume their truth and determine whether the facts would make the plaintiff entitled to relief;  
16 conclusions in the pleading are not entitled to the same assumption of truth. *Id.*

17 **III. Discussion and Analysis**

18 Plaintiff seeks review of a decision denying disability benefits. (Doc. 4) The Court may have  
19 jurisdiction pursuant to 42 U.S.C. § 405(g), which provides in relevant part:

20 Any individual, after any final decision of the Commissioner made after a hearing to  
21 which he was a party, irrespective of the amount in controversy, may obtain a review of  
22 such decision by a civil action commenced **within sixty days after the mailing to him**  
23 **of such decision or within such further time as the Commissioner may allow.** Such  
24 action 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.

25 *Id.* (emphasis added). Except as provided, “[n]o findings of fact or decision of the Commissioner shall  
26 be reviewed by any person, tribunal, or governmental agency.” 42 U.S.C. § 405(h). These regulations  
27 “operate as a statute of limitations setting the time period in which a claimant may appeal a final  
28 decision of the Commissioner.” *Cogburn v. Astrue*, 2013 U.S. Dist. LEXIS 152351, at \* 5 (E.D. Cal.

1 Oct. 29, 2010) (citing *Bowen v. City of New York*, 476 U.S. 467, 479 (1986); *Vernon v. Heckler*, 811  
2 F.2d 1274, 1277 (9th Cir.1987)). The time limit is a condition on the waiver of sovereign immunity,  
3 and it must be strictly construed. *Id.*

4 Plaintiff alleges the Appeals Council denied his request for review of the decision rendered by  
5 an administrative law judge on September 9, 2016, at which time the decision became the final  
6 decision of the Commissioner. (Doc. 4 at 3) Therefore, Plaintiff's action in this Court would be due  
7 65 days of the date of Appeal's Council's notice, or no later than November 12, 2016. *See* 42 U.S.C.  
8 §405(g) (noting a claimant is "presumed" to have received the notice of denial within "5 days after the  
9 date of such notice"). Because Plaintiff initiated this action November 1, 2016, the request for judicial  
10 review is timely, and the Court has jurisdiction over the matter pursuant to 42 U.S.C. § 405(g).

11 **IV. Conclusion and Order**

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

14 **ORDERS:**

- 15 1. The Clerk of Court is DIRECTED to issue summons as to the defendant, Carolyn  
16 Colvin, Acting Commissioner of Social Security;
- 17 2. The Clerk of Court is DIRECTED to issue and serve Plaintiff with Social Security Case  
18 Documents, including the Scheduling Order, Order regarding Consent, the Consent  
19 Form, and USM-285 Forms;
- 20 3. Plaintiff **SHALL** complete and submit to the Court the "Notice of Submission of  
21 Documents in Social Security Appeal Form;" and
- 22 4. The U.S. Marshal is DIRECTED to serve a copy of the First Amended Complaint,  
23 summons, and this order upon the defendant as directed by Plaintiff in the USM Forms.

24  
25 IT IS SO ORDERED.

26 Dated: December 1, 2016

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

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