

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

1 pleads facts that are “merely consistent with” a defendant’s liability, it “stops short of
2 the line between possibility and plausibility of ‘entitlement to relief.

3 *Iqbal*, 556 U.S. at 679 (citations omitted). When factual allegations are well-pled, a court should
4 assume their truth and determine whether the facts would make the plaintiff entitled to relief; legal
5 conclusions are not entitled to the same assumption of truth. *Id.* The Court may grant leave to amend a
6 complaint to the extent deficiencies of the complaint can be cured by an amendment. *Lopez v. Smith*,
7 203 F.3d 1122, 1127-28 (9th Cir. 2000) (en banc).

8 **IV. Discussion and Analysis**

9 Plaintiff seeks review of a decision by the Commissioner of Social Security denying disability
10 benefits. (Doc. 1) The Court may jurisdiction 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
15 such decision or within such further time as the Commissioner may allow. Such action
16 shall be brought in the district court of the United States for the judicial district in
17 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.

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

25 Plaintiff alleges the Appeals Council denied a request for review of the decision denying
26 benefits on May 7, 2017, at which time the decision of the administrative law judge became the final
27 decision of the Commissioner. (Doc. 1 at 2) However, Plaintiff filed the complaint in this action on
28 May 2, 2017. Consequently, it appears the date alleged for the Appeals Council’s decision is incorrect.

1 Without correct information regarding when the Appeals Council denied Plaintiff's request for review,
2 the Court is unable to determine whether the request is timely, or whether the Court has jurisdiction
3 over the matter pursuant to 42 U.S.C. §405(g).

4 **V. 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, the Court **ORDERS**:

- 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 fourteen days from the date of service of this order to file an amended
17 complaint that complies with the requirements of the pertinent substantive law, the
18 Federal Rules of Civil Procedure, and the Local Rules of Practice.

19
20 IT IS SO ORDERED.

21 Dated: May 8, 2017

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