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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

MERCEDEZ SANCHEZ,)	Case No.: 1:17-cv-0620- JLT
)	
Plaintiff,)	ORDER DIRECTING CLERK TO ISSUE
)	SUMMONS AND SOCIAL SECURITY CASE
v.)	DOCUMENTS
)	
CAROLYN W. COLVIN,)	ORDER DIRECTING UNITED STATES
Acting Commissioner of Social Security,)	MARSHAL FOR SERVICE OF THE FIRST
)	AMENDED COMPLAINT (Doc. 4)
Defendant.)	
)	

Mercedez Sanchez is proceeding *pro se* and *in forma pauperis* with an action for judicial review of a determination of the Social Security Administration. Previously, the Court dismissed Plaintiff’s complaint with leave to amend. (Doc. 3) On May 22, 2017, Plaintiff filed a First Amended Complaint (Doc. 4), which is now before the Court for screening.

I. Screening Requirement

When a plaintiff proceeds *in forma pauperis*, the Court is required to review the complaint, and shall dismiss the case at any time if the Court determines that the action is “frivolous, malicious or fails to state a claim on which relief may be granted; or . . . seeks monetary relief against a defendant who is immune from such relief.” 28 U.S.C. 1915(e)(2). The Court must screen the First Amended Complaint because an amended complaint supersedes the previously filed complaints. *See Forsyth v. Humana, Inc.*, 114 F.3d 1467, 1474 (9th Cir. 1997); *King v. Atiyeh*, 814 F.2d 565, 567 (9th Cir. 1987).

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 a request for review of the decision rendered by an
5 administrative law judge on March 7, 2017, at which time the decision became the final decision of the
6 Commissioner. (Doc. 4 at 3) Therefore, Plaintiff's request for review would be due 65 days of the
7 date of Appeal's Council's notice, or no later than May 11, 2017. *See* 42 U.S.C. §405(g) (noting a
8 claimant is "presumed" to have received the notice of denial within "5 days after the date of such
9 notice"). Because Plaintiff initiated this action May 2, 2017, the request for judicial review is timely,
10 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.

14 Based upon the foregoing, the Court **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: May 24, 2017

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