



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  
22 not do. Nor does a complaint suffice if it tenders naked assertions devoid of further  
23 factual enhancement.  
24 *Ashcroft v. Iqbal*, 556 U.S. 662, 678-79 (2009) (internal quotation marks and citations omitted). Vague  
25 and conclusory allegations do not support a cause of action. *Ivey v. Board of Regents*, 673 F.2d 266,  
26 268 (9th Cir. 1982). The Court clarified further,

27 [A] complaint must contain sufficient factual matter, accepted as true, to “state a claim  
28 to relief that is plausible on its face.” [Citation]. A claim has facial plausibility when  
the plaintiff pleads factual content that allows the court to draw the reasonable  
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. Jurisdiction**

8 Plaintiff seeks review of a decision by the Commissioner of Social Security denying disability  
9 benefits. (Doc. 1) The Court would have jurisdiction pursuant to 42 U.S.C. § 405(g), which provides  
10 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  
17 have power to enter, upon the pleadings and transcript of the record, a judgment  
18 affirming, modifying, or reversing the decision of the Commissioner of Social Security,  
19 with or without remanding the cause for a rehearing.

20 *Id.* (emphasis added).

21 Except as provided by statute, “[n]o findings of fact or decision of the Commissioner shall be  
22 reviewed by any person, tribunal, or governmental agency.” 42 U.S.C. § 405(h). The Supreme Court  
23 noted the purpose of the legislation was “to forestall repetitive or belated litigation of stale eligibility  
24 claims.” *Califano v. Sanders*, 430 U.S. 99, 108 (1977). Thus the regulations operate as a statute of  
25 limitations a claimant to appeal a final decision of the Commissioner. *Bowen v. City of New York*, 476  
26 U.S. 467, 479 (1986); *Matthews v. Eldridge*, 424 U.S. 319, 328 n. 9 (1976)). Because the time limit is  
27 “a condition on the waiver of sovereign immunity,” it “must be strictly construed.” *Id.*

#### 28 **V. Discussion and Analysis**

According to Plaintiff, the Appeals Council denied his request for review of the decision  
rendered by the administrative law judge on March 27, 2017, at which time the decision became the  
final decision of the Commissioner. (Doc. 1 at 2, ¶ 8) Therefore, Plaintiff’s request for review would

1 be due within sixty-five days of the date of Appeal’s Council’s notice, or no later than May 31, 2017.  
2 See 42 U.S.C. §405(g) (noting that a claimant is “presumed” to have received the notice of denial  
3 within “5 days after the date of such notice”). However, Plaintiff did not initiate this action until June  
4 1, 2017. Thus, it appears the statute of limitations may have run on the request for review. See, e.g.,  
5 *Fletcher v. Apfel*, 210 F.3d 510 (5th Cir. 2000) (affirming judgment in favor of Commissioner where  
6 the claimant missed the statute of limitations by one day).

7 On the other hand, there are two exceptions to the statute of limitations: (1) the Commissioner  
8 may grant an extension of time to file a civil action, and (2) the statute of limitations may be tolled  
9 through the doctrine of “equitable tolling.” *Bowen*, 476 U.S. at 479-80; 42 U.S.C. § 405(g). Here,  
10 however, Plaintiff does not allege that he requested an extension of time, and does not allege any facts  
11 that would support the equitable tolling of the statute of limitations. Therefore, from the face of  
12 Plaintiff’s complaint, it does not appear the Court has jurisdiction over the matter.

#### 13 **VI. Leave to Amend the Complaint**

14 If the Court determines that a complaint fails to state a claim, leave to amend should be granted  
15 to the extent that the deficiencies of the complaint can be cured by amendment. *Lopez v. Smith*, 203  
16 F.3d 1122, 1130 (9th Cir. 2000) (en banc). A complaint, or a portion thereof, should only be  
17 dismissed for failure to state a claim upon which relief may be granted if it appears beyond doubt that  
18 the plaintiff can prove no set of facts, consistent with the allegations, in support of the claim or claims  
19 that would entitle him to relief. See *Hishon v. King & Spalding*, 467 U.S. 69, 73 (1984), citing *Conley*  
20 *v. Gibson*, 355 U.S. 41, 45-46 (1957); see also *Palmer v. Roosevelt Lake Log Owners’ Ass’n., Inc.*,  
21 651 F.2d 1289, 1294 (9th Cir. 1981).

22 The Court cannot find with certainty that Plaintiff cannot allege facts supporting a  
23 determination that the Court has jurisdiction over the matter. The Court will grant Plaintiff leave to  
24 amend the complaint to cure the deficiencies of this complaint by stating whether he requested an  
25 extension of time from the Appeals Council or, in the alternative, to allege facts that support the  
26 tolling of the statute of limitations. Failure to cure the deficiencies will result in a recommendation  
27 that the matter be dismissed. The amended complaint must bear the docket number assigned this case  
28 and must be labeled “First Amended Complaint.”

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Accordingly, the Court **ORDERS**:

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

IT IS SO ORDERED.

Dated: June 7, 2017

/s/ Jennifer L. Thurston  
UNITED STATES MAGISTRATE JUDGE