



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  
the plaintiff pleads factual content that allows the court to draw the reasonable  
27 inference that the defendant is liable for the misconduct alleged. [Citation]. The  
28 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 have jurisdiction pursuant to 42 U.S.C. § 405(g), which provides:

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 of  
14 such decision or within such further time as the Commissioner may allow. Such action  
15 shall be brought in the district court of the United States for the judicial district in  
16 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.* Except as provided by statute, “[n]o findings of fact or decision of the Commissioner shall be  
21 reviewed by any person, tribunal, or governmental agency.” 42 U.S.C. § 405(h).

22 Here, Plaintiff alleges the Appeals Council denied a request for review of the decision denying  
23 benefits on September 5, 2017, at which time the decision of the administrative law judge became the  
24 final decision of the Commissioner. (Doc. 1 at 2) Plaintiff’s request for judicial review was due within  
25 65 days of the date of Appeals Council’s notice, or no later than November 9, 2017. *See* 42 U.S.C.  
26 §405(g) (noting a claimant is “presumed” to have received the notice of denial within “5 days after the  
27 date of such notice”). Because the request for judicial review of the decision is timely, and the Court  
28 has jurisdiction over the matter pursuant to 42 U.S.C. § 405(g).

29 **V. Conclusion and Order**

30 Plaintiff’s complaint states a cognizable claim for review of the administrative decision denying  
31 Social Security benefits. Based upon the foregoing, the Court **ORDERS**:

- 32 1. Plaintiff’s motion to proceed *in forma pauperis* (Doc. 2) is **GRANTED**;

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2. The Clerk of Court is DIRECTED to issue summons as to the defendant, Nancy Berryhill, Acting Commissioner of Social Security;
3. The Clerk of Court is DIRECTED to issue and serve Plaintiff with Social Security Case Documents, including the Scheduling Order, Order regarding Consent, the Consent Form, and USM-285 Forms; and
4. The U.S. Marshal is DIRECTED to serve a copy of the complaint, summons, and this order upon the defendant as directed by Plaintiff in the USM Forms.

IT IS SO ORDERED.

Dated: October 26, 2017

/s/ Jennifer L. Thurston  
UNITED STATES MAGISTRATE JUDGE