

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 is
6 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). The purpose of the
14 complaint is to give the defendant fair notice of the claims, and the grounds upon which the complaint
15 stands. *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 512 (2002). The Supreme Court noted,

16 Rule 8 does not require detailed factual allegations, but it demands more than an
17 unadorned, the-defendant-unlawfully-harmed-me accusation. A pleading that offers
18 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.

19 *Ashcroft v. Iqbal*, 556 U.S. 662, 678-79 (2009) (internal quotation marks and citations omitted). Vague
20 and conclusory allegations do not support a cause of action. *Ivey v. Board of Regents*, 673 F.2d 266,
21 268 (9th Cir. 1982). The Court clarified further,

22 [A] complaint must contain sufficient factual matter, accepted as true, to “state a
23 claim to relief that is plausible on its face.” [Citation]. A claim has facial plausibility
24 when the plaintiff pleads factual content that allows the court to draw the reasonable
25 inference that the defendant is liable for the misconduct alleged. [Citation]. The
26 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 the line between possibility and plausibility of ‘entitlement to relief.’

27 *Iqbal*, 556 U.S. at 679 (citations omitted). When factual allegations are well-pled, a court should
28 assume their truth and determine whether the facts would make the plaintiff entitled to relief; legal

1 conclusions are not entitled to the same assumption of truth. *Id.* The Court may grant leave to amend a
2 complaint to the extent deficiencies of the complaint can be cured by an amendment. *Lopez v. Smith*,
3 203 F.3d 1122, 1127-28 (9th Cir. 2000) (en banc).

4 **IV. Judicial Review and Administrative Remedies**

5 Plaintiff seeks review of a decision by the Commissioner of Social Security denying disability
6 benefits. (Doc. 1) The Court may have jurisdiction pursuant to 42 U.S.C. § 405(g), which provides:

7 Any individual, after any final decision of the Commissioner made after a hearing to
8 which he was a party, irrespective of the amount in controversy, may obtain a review of
9 such decision by a civil action commenced within sixty days after the mailing to him of
10 such decision or within such further time as the Commissioner may allow. Such action
11 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.

12 *Id.* Except as provided by statute, “[n]o findings of fact or decision of the Commissioner shall be
13 reviewed by any person, tribunal, or governmental agency.” 42 U.S.C. § 405(h).

14 The Supreme Court interpreted the requirement that there be a final decision to obtain judicial
15 review under section 405(g) as including two elements: (1) a waivable requirement that the
16 administrative remedies required by the Social Security Act be exhausted; and (2) a non-waivable
17 requirement that a claim for benefits was presented to the Commissioner. *Mathews v. Eldridge*, 424
18 U.S. 319, 328 (1976); *see also Kildare v. Saenz*, 325 F.3d 1078, 1082 (9th Cir. 2003) (“A final
19 decision has two elements: (1) presentment of the claim to the Commissioner, and (2) complete
20 exhaustion of administrative remedies”). If these elements are not satisfied and “a claimant fails to
21 request review from the [Appeals] Council, there is no final decision and, as a result, no judicial
22 review in most cases. *Sims v. Apfel*, 530 U.S. 103, 107 (2000). The Supreme Court explained, a
23 claimant who has not requested review by the Appeals Council “may not obtain judicial review
24 because he has failed to exhaust administrative remedies.” *Id.*

25 **V. Discussion and Analysis**

26 Plaintiff seeks to appeal the final administrative decision denying her applications for disability
27 insurance benefits and supplemental security income. (Doc. 1) She reports, “The ALJ issued a
28 decision denying plaintiff’s claim for benefits on September 21, 2020.” (*Id.* at 2) According to

1 Plaintiff, “The United District Court remanded Amanda Lopez-Frausto’s claim for benefits [in] *Lopez-*
2 *Frausto v. Berryhill*, 1:17-cv-01106-JLT.” (*Id.* at 2, ¶ 8) Thus, Plaintiff asserts the ALJ’s “decision
3 on remand became the final decision of the Commissioner after remand 60 days after September 21,
4 2020, because neither Amanda Lopez-Frausto filed exceptions nor did the Appeals Council initiate
5 own motion review.” (*Id.*)

6 When a federal court remands a case for further consideration, the ALJ’s new decision
7 becomes the final decision of the Commissioner after remand unless the Appeals Council assumes
8 jurisdiction of the case. 20 C.F.R. §§ 404.983, 404.984(a). A claimant who disagrees with the ALJ’s
9 decision in whole or in part may but is not required to file written exceptions with the Appeals Council
10 within 30 days of the decision. 20 C.F.R. § 404.984(b)(1). If no exceptions are filed and the Appeals
11 Council does not assume jurisdiction within 60 days of the decision, the ALJ’s new decision becomes
12 the final decision of the Commissioner after remand. 20 C.F.R. § 404.984(c), (d).

13 Significantly, however, this Court did *not* remand Plaintiff’s claim for benefits in Case No.
14 1:17-cv-1106-JLT.¹ To the contrary, the Court affirmed the administrative decision denying
15 Plaintiff’s applications for benefits and directed entry of judgment in favor of Nancy A. Berryhill,
16 Acting Commissioner of Social Security on February 4, 2019. (Doc. 17) Thus, Plaintiff did not
17 receive a favorable determination from the Court, and it does not appear the matter was before the ALJ
18 on remand from the Court. Consequently, it is not clear whether Plaintiff properly exhausted her
19 administrative remedies for the decision issued by the ALJ on September 21, 2020.

20 **VI. Leave to Amend the Complaint**

21 If the Court determines that a complaint fails to state a claim, leave to amend should be granted
22 to the extent that the deficiencies of the complaint can be cured by amendment. *Lopez v. Smith*, 203
23 F.3d 1122, 1130 (9th Cir. 2000) (en banc). A complaint, or a portion thereof, should only be dismissed
24 for failure to state a claim upon which relief may be granted if it appears beyond doubt that the plaintiff
25 can prove no set of facts, consistent with the allegations, in support of the claim or claims that would

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27 ¹ The Court may take judicial notice of a fact that “is not subject to reasonable dispute because it (1) is generally
28 known within the trial court’s territorial jurisdiction; or (2) can be accurately and readily determined from sources whose
accuracy cannot reasonably be questioned.” Fed. R. Evid. 201; *see also United States v. Bernal-Obeso*, 989 F.2d 331, 333
(9th Cir. 1993). Judicial notice may be taken of court records. *Mullis v. U.S. Bank. Ct.*, 828 F.2d 1385, 1388 n.9 (9th Cir.
1987). Accordingly, the Court takes judicial notice of its docket and orders issued in Case No. 1:17-cv-1106-JLT.

1 entitle him to relief. *See Hishon v. King & Spalding*, 467 U.S. 69, 73 (1984), citing *Conley v. Gibson*,
2 355 U.S. 41, 45-46 (1957); *see also Palmer v. Roosevelt Lake Log Owners' Assoc., Inc.*, 651 F.2d
3 1289, 1294 (9th Cir. 1981).

4 The Court cannot find with certainty that Plaintiff cannot allege facts supporting a
5 determination that she exhausted her administrative remedies and the Court has jurisdiction over the
6 matter. Thus, the Court will grant Plaintiff leave to amend the complaint to cure the deficiencies of this
7 complaint and clarifying whether she exhausted her administrative remedies. Failure to cure the
8 deficiencies will result in a recommendation that the matter be dismissed. The amended complaint must
9 bear the docket number assigned this case and must be labeled "First Amended Complaint."

10 Accordingly, the Court **ORDERS**:

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

16
17 IT IS SO ORDERED.

18 Dated: November 16, 2020

/s/ Jennifer L. Thurston
UNITED STATES MAGISTRATE JUDGE