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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

DESIREE NELSON,

Plaintiff,

vs.

CAROLYN W. COLVIN, Acting
Commissioner of Social Security,

Defendant.

Case No. 2:16-cv-02402-JCM-CWH
ORDER

Presently before the court is Plaintiff Desiree Nelson’s amended complaint (ECF No. 8), filed on June 21, 2017. Given that the court has granted Plaintiff leave to proceed *in forma pauperis*, the court now re-screens Plaintiff’s amended complaint under 28 U.S.C. § 1915(e)(2).

I. Screening the Amended Complaint

Upon granting a request to proceed *in forma pauperis*, a court must screen the complaint under 28 U.S.C. § 1915(e)(2). In screening the complaint, a court must identify cognizable claims and dismiss claims that are frivolous, malicious, fail to state a claim on which relief may be granted, or seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2). Dismissal for failure to state a claim under § 1915(e)(2) incorporates the standard for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6). *Watison v. Carter*, 668 F.3d 1108, 1112 (9th Cir. 2012). To survive § 1915 review, a complaint must “contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.” *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

In considering whether the complaint is sufficient to state a claim, all allegations of material fact are taken as true and construed in the light most favorable to the plaintiff. *Wylar Summit P’ship v. Turner Broad. Sys. Inc.*, 135 F.3d 658, 661 (9th Cir. 1998) (citation omitted). Although the standard

1 under Rule 12(b)(6) does not require detailed factual allegations, a plaintiff must provide more than
2 mere labels and conclusions. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). A formulaic
3 recitation of the elements of a cause of action is insufficient. *Id.*

4 Plaintiff's amended complaint challenges a decision by the Social Security Administration
5 ("SSA") denying benefits. Before filing suit, a plaintiff must exhaust administrative remedies. *See* 42
6 U.S.C. § 405(g); *see also Bass v. Social Sec. Admin.*, 872 F.2d 832, 833 (9th Cir. 1989) (per curiam)
7 ("Section 405(g) provides that a civil action may be brought only after (1) the claimant has been party
8 to a hearing held by the Secretary, and (2) the Secretary has made a final decision on the claim").
9 Generally, if the SSA denies a claimant's application for disability benefits, he can request
10 reconsideration of the decision. If the claim is denied at the reconsideration level, a claimant may
11 request a hearing before an Administrative Law Judge ("ALJ"). If the ALJ denies the claim, a claimant
12 may request review of the decision by the Appeals Council. If the Appeals Council declines to review
13 the ALJ's decision, a claimant may then request judicial review. *See generally* 20 C.F.R. §§ 404, 416.

14 Once a plaintiff has exhausted administrative remedies, he can obtain judicial review of an SSA
15 decision denying benefits by filing suit within sixty days after notice of a final decision. 42 U.S.C.
16 § 405(g). An action for judicial review of a determination by the SSA must be brought "in the district
17 court of the United States for the judicial district in which the plaintiff resides." *Id.* The complaint
18 should state the nature of plaintiff's disability, when plaintiff claims he became disabled, and when and
19 how he exhausted his administrative remedies. The complaint should also contain a plain, short, and
20 concise statement identifying the nature of plaintiff's disagreement with the SSA's determination and
21 show that plaintiff is entitled to relief. A district court can affirm, modify, reverse, or remand a decision
22 if plaintiff has exhausted his administrative remedies and timely filed a civil action. However, judicial
23 review of the Commissioner's decision to deny benefits is limited to determining: (a) whether there is
24 substantial evidence in the record as a whole to support the findings of the Commissioner; and
25 (b) whether the correct legal standards were applied. *Morgan v. Commissioner of the Social Security*
26 *Adm.*, 169 F.3d 595, 599 (9th Cir. 1999).

27 Here, Plaintiff alleges that on August 19, 2016, the Appeals Council denied her request for
28 review, and, at that time, the ALJ's decision became the final decision of the Commissioner. Thus, it

1 appears Plaintiff has exhausted her administrative remedies. This case was commenced on October 14,
2 2016, which was within sixty days. Additionally, Plaintiff's amended complaint includes sufficient
3 facts to state a claim for relief.

4 **II. Conclusion**

5 Based on the foregoing and good cause appearing therefore,
6 IT IS ORDERED that:

7 1. The Clerk of the Court must serve the Commissioner of the Social Security
8 Administration by sending a copy of the summons and amended complaint (ECF No. 8) by certified
9 mail to: (1) Office of Regional Chief Counsel, Region IX, Social Security Administration, 160 Spear
10 St., Suite 899, San Francisco, California 94105-1545; and (2) the Attorney General of the United States,
11 Department of Justice, 950 Pennsylvania Avenue, N.W., Room 4400, Washington, D.C. 20530.

12 2. The Clerk of Court must issue summons to the United States Attorney for the District of
13 Nevada and deliver the summons and Complaint to the U.S. Marshal for service.

14 3. From this point forward, Plaintiff must serve on Defendant or, if appearance has been
15 entered by an attorney, on the attorney, a copy of every pleading, motion or other document submitted
16 for consideration by the court. Plaintiff must include with the original paper submitted for filing a
17 certificate stating the date that a true and correct copy of the document was personally served or sent by
18 mail to the defendants or counsel for the defendants. The court may disregard any paper received by a
19 district judge or magistrate judge that has not been filed with the Clerk, and any paper received by a
20 district judge, magistrate judge or the Clerk that fails to include a certificate of service.

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22 Dated: July 12, 2017

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25 **C.W. Hoffman, Jr.**
26 **United States Magistrate Judge**