

1 UNITED STATES DISTRICT COURT

2 Northern District of California

3
4 MICHELLE MELLEMS,

5 Plaintiff(s),

No. C 09-03429 MEJ

6 v.

7 CA HEALTH AND HUMAN SERVICES,

**ORDER DISMISSING COMPLAINT
WITH LEAVE TO AMEND AND
DISMISSING ACTION**

8 Defendant(s).
9 _____/

10 Plaintiff filed this action claiming a denial of her "14th Amendment US Constitutional
11 Rights" and seeks to proceed in forma pauperis. The district court may deny in forma pauperis
12 status and dismiss a complaint sua sponte if the complaint is frivolous, or fails to state a claim upon
13 which relief may be granted, or if it seeks monetary relief from a defendant who is immune from
14 such relief. 28 U.S.C. §1915(e)(2)(B). A complaint is frivolous if "it lacks an arguable basis either
15 in law or in fact." *Neitzke v. Williams*, 490 U.S. 319, 325 (1989) (found to be superseded on other
16 grounds by reason of adoption of section 1915(e), which makes dismissal for failure to state a claim
17 mandatory); *see, e.g., Lopez v. G.A.Smith*, 203 F.3d 1122, 1126 (9th Cir. 2000); *Cruz v. Gomez*,
18 *I/O*, 202 F.3d 593, 596 (2d Cir. 2000)). Furthermore, where the complaint alleges facts that are
19 "clearly baseless", "fanciful", or "delusional" it may be dismissed as frivolous. *Denton v.*
20 *Hernandez*, 504 U.S. 25, 112 S.Ct. 1728, 1733 (1992) (also found superseded in that dismissal was
21 within discretion of district court under section 1915(d) and now, under section 1915(e)(2) dismissal
22 is mandatory, *see Cruz v. Gomez*, 202 F.3d at 596.

23 Here, Plaintiff's one-paragraph complaint vaguely states that the defendant failed to grant her
24 a hearing and failed to provide her with food stamps. She seeks \$1,000,000. This is all the court
25 can discern from her garbled complaint. This court cannot determine whether Plaintiff has a claim or
26 what it is or whether her claim is frivolous or wholly without merit. If the *pro se* plaintiff can cure
27 the factual allegations in order to state a claim, the court may give him leave to do so. However, if
28 repleading cannot cure the deficiencies, the court may dismiss without leave to amend and even

1 dismiss with prejudice. *See Cato v. United States*, 70 F.3d 1103, 1106 (9th Cir. 1995). Accordingly,
2 the complaint is DISMISSED WITH LEAVE TO FILE AN AMENDED COMPLAINT, at which
3 time in forma pauperis may be considered if Plaintiff states what appears to be claims upon which
4 relief may be granted.

5 Furthermore, while the court dismisses this complaint with leave to amend, it is also clear
6 that this action should not be venued in this court. Plaintiff's residence is not alleged in the
7 complaint; from the papers she has submitted, including the caption of the complaint, it appears that
8 she lives in Rancho Cucamonga, California. The name of the city of her residence is abbreviated
9 and somewhat indecipherable; however, her zip code, which appears on all of her papers, is 91730,
10 which the court takes judicial notice is the zip code for Rancho Cucamonga. The address she
11 gives for the defendant is in Sacramento, California. Rancho Cucamonga is in the Central District
12 and Sacramento is in the Eastern District.

13 Neither Plaintiff nor Defendant nor the acts of which she complains occurred in the Northern
14 District, and there appears to be no reason for this action to be in this District. Therefore, this action
15 is TRANSFERRED pursuant to 28 U.S.C. 1404(a) to the United States District Court for the Central
16 District of California. If Plaintiff amends her complaint, she shall do so within sixty (60) days of the
17 date of this order and file it in the Central District, Eastern Division with the case number assigned
18 by that court.¹ The Clerk of Court shall transfer this action and the file forthwith to the Clerk of
19 Court for the Central District, Eastern Division.

20 **IT IS SO ORDERED.**

21
22 Dated: August 20, 2009

23 
24 _____
25 Maria-Elena James
26 Chief United States Magistrate Judge

27 _____
28 ¹The Office of the Clerk of Court for the Eastern Division is located in Riverside, California. Plaintiff is referred to the website of the United States District Court for the Central District where she can obtain the address in Riverside and other necessary information. The website address is: www.cacd.uscourts.gov

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UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

MICHELLE MELLEMS,
Plaintiff,

Case Number: CV09-03429 MEJ

CERTIFICATE OF SERVICE

v.

CA HEALTH AND HUMAN SERVICES et al,
Defendant.

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on August 20, 2009, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Michelle Mellens
9600 Edelweiss
Rancho Cucamonga, CA 91730

Dated: August 20, 2009

Richard W. Wieking, Clerk
By: Brenda Tolbert, Deputy Clerk