

1
2 UNITED STATES DISTRICT COURT
3 NORTHERN DISTRICT OF CALIFORNIA
4
5

6 LYNN GAVIN,

7 Plaintiff,

No. C 13-0056 PJH

8 v.

9 JOHN ARNTZ, et al.

**ORDER GRANTING IFP REQUEST,
DENYING TRO WITHOUT NOTICE,
AND SETTING HEARING ON TRO
REQUEST IF NOTICE IS PROVIDED**

10 Defendants.
11 _____/

12 Before the court is plaintiff's application to proceed in forma pauperis ("IFP request"),
13 along with plaintiff's "ex parte application for an emergency temporary restraining order for
14 a preliminary injunction for the swearing in of Norman Yee for District 7 and permanent
15 injunction enjoining all defendants." Plaintiff's request was filed on the afternoon of January
16 4, 2013, and seeks to enjoin actions scheduled to occur on January 8, 2013.

17 While plaintiff claims to be proceeding ex parte, she has not complied with Federal
18 Rule of Civil Procedure 65(b)(1), which allows the issuance of a temporary restraining order
19 ("TRO") without notice to the adverse parties only if "specific facts in an affidavit or a
20 verified complaint clearly show that immediate and irreparable injury, loss, or damage will
21 result to the movant before the adverse party can be heard in opposition," and if the
22 movant "certifies in writing any efforts made to give notice and the reasons why it should
23 not be required." Plaintiff has not complied with these requirements, and thus the court
24 cannot issue a TRO before the defendants receive notice of the TRO request.

25 Because plaintiff is seeking to enjoin actions scheduled to occur only four days from
26 today (on January 8, 2013), any hearing on plaintiff's TRO request would need to be
27 scheduled for Monday, January 7, 2013. While the court has reviewed plaintiff's IFP
28 request, and finds that plaintiff does qualify for IFP status, the U.S. Marshals will not be

1 able to serve plaintiff's TRO request (which was filed this afternoon) before Monday.
2 Because plaintiff's IFP request is GRANTED, however, the U.S. Marshals will still effect
3 service of the complaint itself.

4 If plaintiff intends to proceed with her TRO request, she must effect service of the
5 request on all defendants before Monday, January 7, 2013. If plaintiff is able to serve the
6 TRO request on defendants by January 7, and files proofs of service with the Clerk's office
7 before 9:00am on January 7, then the court will conduct a hearing on plaintiff's TRO
8 request on Monday, January 7, at 10:00am. However, because plaintiff's request was
9 received late in the day, this order is being filed after the close of business hours, and the
10 court recognizes that it is unlikely that plaintiff (who is proceeding pro se, and does not
11 receive electronic notice of court orders) will receive notice of this order in time to effect
12 service of the TRO request before Monday.

13
14 **IT IS SO ORDERED.**

15 Dated: January 4, 2013



16 _____
17 PHYLLIS J. HAMILTON
18 United States District Judge
19
20
21
22
23
24
25
26
27
28