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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

TEVIS R. IGNACIO AKA JOHN JACOB )  
JINGLEHEIMER SCHMIDT, )  
 )  
Plaintiffs, )  
v. )  
INTERNAL REVENUE SERVICE, ET )  
AL., )  
 )  
Defendants. )  
\_\_\_\_\_ )

Case No.: C 10-03973 PVT  
**ORDER TO REASSIGN CASE;  
REPORT AND RECOMMENDATION  
THAT CASE BE DISMISSED WITH  
LEAVE TO AMEND**  
**[Docket No. 2]**

On September 3, 2010, plaintiff Tevis R. Ignacio also known as John Jacob Jingleheimer Schmidt proceeding *pro se* filed a complaint and an Application to Proceed *In Forma Pauperis*. Based on the Application and the file herein,

IT IS HEREBY ORDERED that this case be reassigned to a District Court Judge with the recommendation that the case be dismissed with leave to amend.<sup>1</sup> A federal court must dismiss an *in forma pauperis* complaint if the complaint is: (1) frivolous; (2) fails to state a claim on which relief may be granted; or (3) seeks monetary relief against a defendant who is immune from such relief. *See*, 28 U.S.C. §1915(e)(2); *see also*, *Neitzke v. Williams*, 490 U.S. 319, 324 (1989).

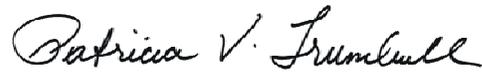
<sup>1</sup> This court is ordering reassignment to a District Court Judge because, absent consent of all parties, a Magistrate Judge does not have authority to make case-dispositive rulings. *See, e.g., Tripati v. Rison*, 847 F. 2d 548 (9th Cir. 1988).

1 In the present case, plaintiff Ignacio alleges that “the IRS has a long history of abuse of  
2 power by using this kind of action in which they claim to charge \$5,000 as described as Penalty for  
3 filing a frivolous tax return and charging accrued interest of \$77.30 in which this is the first notice of  
4 any problem.” Aside from alleging that “this is wrong and an abuse of power by the IRS,” plaintiff  
5 Ignacio has failed to state a claim on which relief may be granted.

6 Generally, a district court must give *pro se* litigants an opportunity to amend their complaint.  
7 “[L]eave [to amend] shall be freely given when justice so requires.” Fed. R. Civ. P. 15(a).  
8 Additionally, a federal court may liberally construe the “inartful pleading” of parties appearing *pro*  
9 *se*. *Hughes v. Rowe*, 449 U.S. 5, 9, 101 S.Ct. 173, 176 (1980). Accordingly, this court recommends  
10 that the district court dismiss the complaint with leave to amend.

11 IT IS SO ORDERED.

12 Dated: September 8, 2010



PATRICIA V. TRUMBULL  
United States Magistrate Judge

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