

1  
2  
3  
4  
5  
6  
7  
8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA  
10 SAN JOSE DIVISION

11 TINA PEDRIZZETTI BERTUCCIO, )

Case No.: 13-CV-01339-LHK

12 Plaintiff, )

ORDER DISMISSING ACTION WITH  
LEAVE TO AMEND

13 v. )

14 SAN BENITO COUNTY; SANTA CLARA )  
15 COUNTY; STATE OF CALIFORNIA; SOCIAL )  
16 SECURITY ADMINISTRATION; U.S. )  
GOVERNMENT, )

Defendants. )

17 On March 25, 2013, Plaintiff Bertuccio filed a Complaint naming as Defendants “San  
18 Benito Cty et al and/or Santa Clara County et al[;] State of California[;] Social Security  
19 Administration[;] U.S. Government.” ECF No. 1. Plaintiff has also filed an Application to Proceed  
20 in Forma Pauperis (“IFP Application”), ECF No. 3, as well as the following *ex parte* motions:  
21 “Motion for Summary Judgment, Emergency Motion to Shorten Time, Motion for Reassignment to  
22 a United States District Judge,” ECF No. 4; “Motion for Emergency Relief and Judgment; Motion  
23 to Waive Any Filing Problems,” ECF No 5; “Motion to Shorten Time for Government to  
24 Administratively Adjudicate the Claim[;] Motion to Waive the Time the Plaintiff Tina Bertuccio  
25 Has To Wait To File Civil Suit,” ECF No. 6; “Request for Emergency Orders Ex Parte and  
26 Summary Judgment Req. for Our Legal Identifying Docs[;] Req. for Specific Gov. Code if  
27 denied[;] Jud. Review Request for Judge to Enforce the Legal Documents,” ECF No. 9. The Court  
28

1 first DENIES Plaintiff's IFP Application and DISMISSES the Complaint with leave to amend, and  
2 then DENIES as moot Plaintiff's pending *ex parte* motions.

3 **A. In Forma Pauperis Application**

4 Under the federal in forma pauperis statute, a court may authorize the commencement of a  
5 suit without prepayment of the filing fee required by the clerk of the court if the plaintiff submits  
6 an affidavit of poverty showing that he or she is "unable to pay such fees or give security therefor."  
7 28 U.S.C. § 1915(a). However, even if the plaintiff makes an adequate showing of poverty, the  
8 Court may deny leave to proceed in forma pauperis and dismiss the complaint if it determines at  
9 the outset "from the face of the proposed complaint that the action is frivolous or without merit," or  
10 the action fails to state a claim on which relief may be granted. *Tripathi v. First Nat'l Bank & Trust*,  
11 821 F.2d 1368, 1370 (9th Cir. 1987); *Minetti v. Port of Seattle*, 152 F.3d 1113, 1115 (9th  
12 Cir.1998); *see also* 28 U.S.C. § 1915(e); *Calhoun v. Stahl*, 245 F.3d 845, 845 (9th Cir. 2001) (per  
13 curiam) ("[T]he provisions of 28 U.S.C. § 1915(e)(2)(B) are not limited to prisoners.").

14 A complaint is frivolous if "it has no arguable substance of law or fact." *Tripathi*, 821 F.2d at  
15 1370 (citations omitted); *Neitzke v. Williams*, 490 U.S. 319, 325 (1989). The term frivolous  
16 "embraces not only the inarguable legal conclusion, but also the fanciful factual allegation."  
17 *Neitzke*, 490 U.S. at 325. In order to state a claim on which relief may be granted, a plaintiff must  
18 plead "factual content that allows the court to draw the reasonable inference that the defendant is  
19 liable for the misconduct alleged." *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

20 The Court is concerned about the sufficiency of Plaintiff's IFP Application. Plaintiff has  
21 declared under penalty of perjury that she is not presently employed, that she is facing eviction, and  
22 that her monthly expenses are \$950.00. However, in completing the Application to Proceed in  
23 Forma Pauperis, Plaintiff has left significant portions of the application blank. Specifically, she  
24 does not indicate "the date of last employment and the amount of the gross and net salary and  
25 wages per month" she received, and she has not indicated whether or not she has received within  
26 the past twelve months any money from "Business, Profession or self employment"; "Income from  
27 stocks, bonds, or royalties"; "Rent payments"; or "Pensions, annuities, or life insurance payments."  
28 IFP Application at 1-2. She states that she has been receiving money from a government source,

1 but does not specify which source. *Id.* at 2. She offers only the following explanation: “I have  
2 been accepting an illegal check issued by Audrey Franco ITF Gail Franco \$550.00 for rent. . . . I  
3 now refused to accept it and have an eviction notice.” *Id.* She also indicates “unknown” in  
4 response to whether she owns a home or automobile, a bank account, or any cash. *Id.* at 3. She  
5 states, “see attached complaint for explanation of unknowns,” which appears to reference her entire  
6 Complaint. *Id.* Plaintiff does note on the IFP Application form that she is unable to afford access  
7 to a computer to print paper work or to make copies. *Id.* at 1.

8 However, the Court’s greater concern lies with the sufficiency of the Complaint. Even  
9 construing Plaintiff’s pro se Complaint liberally, *see Bernhardt v. Los Angeles County*, 339 F.3d  
10 920, 925 (9th Cir. 2003), it is not clear from the face of the proposed Complaint which substantive  
11 claims Plaintiff is pursuing, or what relief is sought. This confusion is compounded by the fact that  
12 the Complaint’s paragraphs are not numbered, nor is each paragraph limited to a single set of  
13 circumstances. *See* Fed. R. Civ. P. 10 (“A party must state its claims or defenses in numbered  
14 paragraphs, each limited as far as practicable to a single set of circumstances.”) More importantly,  
15 the Court is unable to determine which parts of the Complaint show that Plaintiff is entitled to  
16 relief, or what relief Plaintiff seeks. *See* Fed. R. Civ. P. 8(a):

17 Claim for Relief. A pleading that states a claim for relief must contain:  
18 (1) a short and plain statement of the grounds for the court's jurisdiction, unless the  
19 court already has jurisdiction and the claim needs no new jurisdictional support;  
20 (2) a short and plain statement of the claim showing that the pleader is entitled to  
21 relief; and  
22 (3) a demand for the relief sought, which may include relief in the alternative or  
23 different types of relief.

24 The Court discerns that Plaintiff’s claims arise out of her initial allegation that “defendants  
25 [sic] caused personal injury and pain, acquired my unclaimed property, illegally documented me  
26 under a fictitious name, [and] illegally took my child.” Compl. at 1. However, the subsequent  
27 paragraphs do not provide sufficient factual allegations to substantiate these claims, do not  
28 distinguish between which allegations are brought against which defendant, and do not identify the  
relief the Plaintiff seeks. As a result, the Court DENIES Plaintiff’s IFP Application, and  
DISMISSES the Complaint.

**B. Leave to Amend**

However, the Court gives Plaintiff leave to amend her Complaint and re-file a new IFP application. A court should grant leave to amend even if no request to amend the pleading was made, unless the court determines that the pleading could not possibly be cured by the allegation of other facts. *Lopez v. Smith*, 203 F.3d 1122, 1130 (9th Cir. 2000); *see also Tripathi*, 821 F.2d at 1370. Specifically, “*pro se* plaintiffs proceeding in forma pauperis must also be given an opportunity to amend their complaint unless it is ‘absolutely clear that the deficiencies of the complaint could not be cured by amendment.’” *Tripathi*, 821 F.2d at 1370 (quoting *Franklin v. Murphy*, 745 F.2d 1221, 1228 n.9 (9th Cir. 1984)). In this case, Plaintiff may be able to cure the deficiencies of the Complaint by clearly identifying the factual basis of her allegations in numbered paragraphs, specifying which allegations are brought against which Defendants, and clearly identifying the relief that she requests. Accordingly, Plaintiff is given leave to file an amended Complaint within 21 days of this Order. Plaintiff may also file a new IFP Application, provided that the application answers each of the questions to the best of Plaintiff’s ability, and explicitly explains any “unknown” information.


**C. Ex Parte Communications with the Court**

Plaintiff has not served any of the Defendants, nor notified them of any of her subsequent motions. Because the opposing parties were not notified of the motions, these motions are considered *ex parte* communications. *See* Civil Local Rule 1-5(d) (“*Ex parte* means contact with the Court without the advance knowledge or contemporaneous participation of all other parties.”).

If not ordered by the assigned judge, *ex parte* motions are prohibited unless “a statute, Federal Rule, local rule or Standing Order authorizes the filing of an *ex parte* motion in the circumstances and the party has complied with the applicable provisions allowing the party to approach the Court on an *ex parte* basis. The motion must include a citation to the statute, rule or order which permits the use of an *ex parte* motion to obtain the relief sought.” Civil Local Rule 7-10. None of Plaintiffs’ motions identified any authorization for her *ex parte* communications. This alone would justify denial of Plaintiff’s four *ex parte* motions. Moreover, because this Order dismisses Plaintiff’s Complaint, Plaintiff’s pending motions are DENIED as moot.

1 **IT IS SO ORDERED.**

2  
3 Dated: May 15, 2013

  
LUCY H. KOH  
United States District Judge