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28UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

GRACE L. SANDOVAL,
vs. Plaintiff,
MERCURY INSURANCE,
Defendant.

CASE NO. 09cv2217-L(JMA)

**ORDER (1) GRANTING
MOTION TO PROCEED IN
FORMA PAUPERIS; (2)
DENYING REQUEST FOR
APPOINTMENT OF COUNSEL;
AND (3) DISMISSING
COMPLAINT**

Plaintiff Grace L. Sandoval, proceeding *pro se*, has submitted a complaint pursuant to 18 U.S.C. § 1962. With the complaint Plaintiff filed a Motion to Proceed *in Forma Pauperis* and a Request for Appointment of Counsel.

All parties instituting any civil action, suit or proceeding in a United States District Court must pay a filing fee. *See* 28 U.S.C. § 1914(a). An action may proceed despite a plaintiff's failure to prepay the fee only if the plaintiff is granted leave to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915(a). *See Rodriguez v. Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999). Plaintiff's declaration shows she has insufficient income and assets to pay the filing fee. Accordingly, Plaintiff's motion to proceed *in forma pauperis* is granted.

The court is obligated to review a complaint filed *in forma pauperis* and must dismiss it if it determines that the action is frivolous or malicious, fails to state a claim on which relief may be granted or seeks monetary relief against a defendant who is immune

1 from such relief. 28 U.S.C. § 1915(e)(2)(B); *see also Calhoun v. Stahl*, 254 F.3d 845 (9th
2 Cir. 2001). “[W]hen determining whether a complaint states a claim, a court must accept
3 as true all allegations of material fact and must construe those facts in the light most
4 favorable to the plaintiff.” *Resnick v. Hayes*, 213 F.3d 443, 447 (9th Cir. 2000).

5 A complaint will be considered frivolous, and therefore subject to dismissal under
6 § 1915(e)(2)(B), “where it lacks an arguable basis either in law or in fact.” *Nietzke v.*
7 *Williams*, 490 U.S. 319, 325 (1989); *see also Denton v. Hernandez*, 504 U.S. 25, 32-33
8 (1992). A federal court cannot properly *sua sponte* dismiss an action commenced *in forma*
9 *pauperis* if the facts alleged in the complaint are merely “unlikely.” *Denton*, 504 U.S. at
10 33. However, a complaint may be properly dismissed *sua sponte* if the allegations are
11 found to be “fanciful,” “fantastic,” or “delusional,” or if they “rise to the level of the
12 irrational or the wholly incredible.” *Id.* at 32-33. In addition, cases which “merely repeat[]
13 pending or previously alleged claims” may be dismissed as frivolous. *Cato v. United*
14 *States*, 70 F.3d 1103, 1105 n.2 (9th Cir. 1995). If a case is classified as frivolous, “there is,
15 by definition, no merit to the underlying action and so no reason to grant leave to amend.”
16 *Lopez v. Smith*, 203 F.3d 1122, 1127 n.8 (9th Cir. 2000) (*en banc*).

17 Plaintiff claims her action arises under the Racketeer Influenced and Corrupt
18 Organizations Act (“RICO”), 18 U.S.C. § 1962(a), (b), (c) and/or (d). (*See* docket no. 1,
19 Civil Cover Sheet.) Pursuant to 18 U.S.C. § 1964(c), “[a]ny person injured in his business
20 or property by reason of a violation of section 1962 of this chapter may sue therefor in any
21 appropriate United States district court . . .” Neither the complaint nor the accompanying
22 RICO Case Statement is sufficient to state a claim. In the complaint, devoid of any
23 headings or paragraphs, Plaintiff offers a stream-of-consciousness account of fantastic and
24 fanciful criminal activity. These allegations are similar to the allegations in the previously-
25 dismissed cases, *Grace L. Sandoval v. Rogelio Pina*, case no. 08cv1297-L(LSP), *Grace L.*
26 *Sandoval v. Leonard Fink*, case no.08cv1869-L(NLS), and *Grace L. Sandoval v. Interim*
27 *Health Care*, case no. 09cv1507-L(POR).

28 Plaintiff’s allegations are fanciful and fantastic rather than merely unlikely. An

1 example of Plaintiff's "fanciful" allegations is that

2 Ernest Manuel Gutierrez Jr. is . . . born out of wedlock, born premature with
3 the drug Provera illegally, etc. . . . Ernest Manuel Gutierrez Jr. planned the
4 pile up of five cars on freeway fifteen . . . with many others that were also
born premature with the drug Provera illegally . . .

5 Another example is that Plaintiff

6 contacted Modern Paint and Body . . . and immediately owner agreed to have
7 my car . . . towed to repair with one letter from Mercury Insurance after
8 reading entire letter on telephone. Owner of Modern Paint and Body
9 providing me . . . with an estimate of damages immediately and also to charge
10 me . . . with amount of tow because Mercury Insurance did not agree to pay
11 for damage to my car Owner of Modern Paint and Body . . . is an orphan
from Arizona. Owner of Modern Paint and Body . . . did the same to my
daughter . . . after her car . . . had damages as planned also by orphans from
Arizona involved in planning auto accidents, rear end to cars, collision, pile
up of cars on freeways, etc. including stealing thousands of cars . . .

12 Although in some cases it may be difficult to judge whether a plaintiff's factual allegations
13 are truly "fanciful," "fantastic," or "delusional" as opposed to merely "unlikely," this is not
14 such a case. *See Denton*, 504 U.S. at 33. These allegations "rise[] to the level of irrational
15 or the wholly incredible." *Id.* Accordingly, the complaint is dismissed as frivolous. *See*
16 *Lopez*, 203 F.3d at 1127 n.8.

17 Based on the foregoing, Plaintiff's request to proceed *in forma pauperis* is
18 **GRANTED**. The complaint is **DISMISSED WITHOUT LEAVE TO AMEND**.
19 Plaintiff's motion for appointment of counsel is **DENIED** as moot.

20 **IT IS SO ORDERED.**

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22 DATED: October 22, 2009

23 
24 M. James Lorenz
United States District Court Judge

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