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Appoint Counsel, and GRANTS the Motion to Amend/Correct Document
 Discrepancies.

BACKGROUND

Plaintiff alleges that Plaintiff's identity was stolen in 1991 and 1993. (FAC at 4 2.) Plaintiff alleges that in "1993 I did not work and IRS contacted me about 5 payment.... Nellency [sic] of IRS cost me a lot of stress and mental disturbance." (Id. 6 at 2.) Plaintiff wishes to "correct administrative error by IRS [because] my record[s] 7 are incorrect" (id. at 3), and that "I need trial date in Tax court to present my case and 8 to make payment agreement on installment payment and to request waiver of penalties" 9 (id. at 1). Plaintiff also alleges that Plaintiff unsuccessfully sought assistance from a 10 "tax advocate," H&R Block, and a law student, among others. (Id. at 3.) 11

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I.

DISCUSSION

SUA SPONTE SCREENING AND DISMISSAL

A complaint filed by any person proceeding, or seeking to proceed, *in forma pauperis* under 28 U.S.C. § 1915(a) is subject to mandatory *sua sponte* review and
dismissal if the complaint is frivolous or malicious, fails to state a claim upon which
relief may be granted, or seeks monetary relief from a defendant immune from suit. 28
U.S.C. § 1915(e)(2)(B); *Lopez v. Smith*, 203 F.3d 1122, 1126-27 (9th Cir. 2000).

The legal sufficiency of a complaint is tested under Federal Rule of Civil 19 20 Procedure 12(b)(6). Navarro v. Block, 250 F.3d 729, 732 (9th Cir. 2001). Under Rule 12(b)(6), dismissal is appropriate if the complaint fails to state a facially plausible 21 22 claim for relief. Bell Atl. Corp. v. Twombly, 550 U.S. 544, 556-57 (2007). That is, the complaint must state enough facts to raise a reasonable expectation that discovery will 23 reveal evidence of the claim. Id. at 556. Dismissal is also appropriate when the 24 complaint lacks a cognizable legal theory. Robertson v. Dean Witter Reynolds, Inc., 25 749 F.2d 530, 534 (9th Cir. 1984). The court must assume the truth of all factual 26 allegations and construe them in the light most favorable to the plaintiff. Thompson 27 v. Davis, 295 F.3d 890, 895 (9th Cir. 2002); Cahill v. Liberty Mut. Ins. Co., 80 F.3d 28

336, 337-38 (9th Cir. 1996). Pro se litigants are not "excused from knowing the most
 basic pleading requirements." Am. Ass 'n of Naturopathic Physicians v. Hayhurst, 227
 F.3d 1104, 1107 (9th Cir. 2000).

Here, Plaintiff does not allege sufficient facts to establish that the IRS made an
"administrative error." In addition, even assuming that the IRS made an administrative
error, Plaintiff does not cite a legal basis for bringing a cause of action against the IRS.
Moreover, Plaintiff is informed that this Court, the United States District Court for the
Southern District of California, is distinct from the United States Tax Court. The
Complaint is **DISMISSED WITHOUT PREJUDICE** because it lacks a cognizable
legal theory.

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II. MOTION TO PROCEED IN FORMA PAUPERIS AND MOTION TO APPOINT COUNSEL

Because Plaintiff's First Amended Complaint is dismissed, Plaintiff's Motion to
Proceed *In Forma Pauperis* and Motion to Appoint Counsel are **DENIED** as moot.

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III. MOTION TO AMEND/CORRECT NOTICE OF DOCUMENT DISCREPANCIES

A Notice of Document Discrepancies was filed on January 17, 2013, accepting
Plaintiff's First Amended Complaint for filing. (Docket No. 6.) This Notice of
Document Discrepancies contained a typographical error, in that it listed the case title
as "Perez v. INS."

On January 25, 2013, Plaintiff filed a Motion to Amend/Correct Document
Discrepancies, informing the Court that the correct title of this case is "Perez v. IRS."
The Court acknowledges that a typographical error was made on the January 17, 2013
Notice of Document Discrepancies. Plaintiff's motion to amend the Notice of
Document Discrepancies is GRANTED.

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CONCLUSION

For the reasons stated above, the First Amended Complaint is **DISMISSED** WITHOUT PREJUDICE. Plaintiff is granted leave to file a second amended complaint that corrects the deficiencies outlined above. Any such second amended complaint must be filed no later than <u>April 15, 2013</u>. If Plaintiff chooses to file a
 second amended complaint, Plaintiff is encouraged to write as legibly as possible.

The Motion to Proceed *In Forma Pauperis* and Motion to Appoint Counsel are **DENIED** as moot. If Plaintiff wishes to renew the Motion to Proceed *In Forma Pauperis* or the Motion to Appoint Counsel, Plaintiff must file a new motion to proceed *in forma pauperis* and motion to appoint counsel along with a second amended complaint.

The Motion to Amend/Correct Notice of Document Discrepancies is **GRANTED.**

IT IS SO ORDERED. DATED:

HOM. ROGER T. BENITEZ