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U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY  COURT REPORTER

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

GUADALUPE OCHOA PEREZ,
Plaintiff,

vs.

IRS,
Defendant.

CASE NO. 12-CV-2026 BEN (NLS)

ORDER:

- (1) DISMISSING ACTION WITHOUT PREJUDICE**
- (2) DENYING AS MOOT MOTION TO PROCEED *IN FORMA PAUPERIS***
- (3) DENYING AS MOOT MOTION TO APPOINT COUNSEL**
- (4) GRANTING MOTION TO AMEND/CORRECT NOTICE OF DOCUMENT DISCREPANCIES**

[Docket Nos. 8, 9, 11]

On January 17, 2013, *pro se* Plaintiff Guadalupe Ochoa Perez filed a First Amended Complaint against the Internal Revenue Service ("IRS"). (Docket No. 7.) Plaintiff also filed a Motion to Proceed *In Forma Pauperis* (Docket No. 8), a Motion to Appoint Counsel (Docket No. 9), and a Motion to Amend/Correct Notice of Document Discrepancies (Docket No. 11). The Court decides the matters on the papers submitted. For the reasons outlined below, the Court **DISMISSES** the action without prejudice, **DENIES** as moot the Motion to Proceed *In Forma Pauperis* and Motion to

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

3 **BACKGROUND**

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

12 **DISCUSSION**

13 **I. *SUA SPONTE* SCREENING AND DISMISSAL**

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

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

1 336, 337-38 (9th Cir. 1996). *Pro se* litigants are not “excused from knowing the most
2 basic pleading requirements.” *Am. Ass’n of Naturopathic Physicians v. Hayhurst*, 227
3 F.3d 1104, 1107 (9th Cir. 2000).

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

11 **II. MOTION TO PROCEED *IN FORMA PAUPERIS* AND MOTION TO APPOINT**
12 **COUNSEL**

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

15 **III. MOTION TO AMEND/CORRECT NOTICE OF DOCUMENT DISCREPANCIES**

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

20 On January 25, 2013, Plaintiff filed a Motion to Amend/Correct Document
21 Discrepancies, informing the Court that the correct title of this case is “Perez v. IRS.”
22 The Court acknowledges that a typographical error was made on the January 17, 2013
23 Notice of Document Discrepancies. Plaintiff’s motion to amend the Notice of
24 Document Discrepancies is **GRANTED**.

25 **CONCLUSION**

26 For the reasons stated above, the First Amended Complaint is **DISMISSED**
27 **WITHOUT PREJUDICE**. Plaintiff is granted leave to file a second amended
28 complaint that corrects the deficiencies outlined above. Any such second amended

1 complaint must be filed no later than **April 15, 2013**. If Plaintiff chooses to file a
2 second amended complaint, Plaintiff is encouraged to write as legibly as possible.

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

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

10 **IT IS SO ORDERED.**

11 DATED: 3/14/2013

12 
13 HON. ROGER T. BENITEZ
14 United States District Judge

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