

1 **WO**

NOT FOR PUBLICATION

2  
3  
4  
5  
6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
8

9 Belia Hurtado Cruz,

No. CV-16-02048-PHX-JJT

10 Plaintiff,

**ORDER**

11 v.

12 Carolyn W. Colvin,

13 Defendant.  
14

15 At issue is Plaintiff Belia Hurtado Cruz's Application to Proceed in District Court  
16 Without Prepaying Fees or Costs (Doc. 2). Having determined that Plaintiff is unable to  
17 pay the Court's fees, the Court will grant the Application.

18 In her Application, Plaintiff also notes that she filed for Chapter 7 bankruptcy  
19 protection in 2016 in the District of Arizona, Case No. 16-BK-013190-MCW, and the  
20 Bankruptcy Court apparently discharged her debts on June 2, 2016. Because a federal  
21 court is obligated to inquire into its subject matter jurisdiction in each case and to dismiss  
22 a case when subject matter jurisdiction is lacking, *see Valdez v. Allstate Ins. Co.*, 372  
23 F.3d 1115, 1116 (9th Cir. 2004), the Court *sua sponte* examines Plaintiff's standing to  
24 bring this case.

25 It appears Plaintiff's claims in this lawsuit accrued before she filed for bankruptcy  
26 protection, and thus the trustee in her bankruptcy proceeding may have become the real  
27 party in interest with regard to her claims. *See* 11 U.S.C. § 541(a); *Dunmore v. United*  
28 *States*, 358 F.3d 1107, 1112 (9th Cir. 2004). However, the debtor in a bankruptcy

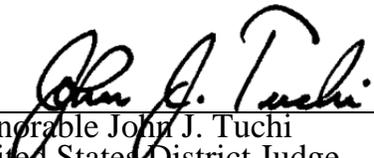
1 proceeding may exempt certain claims, such as those for social security disability  
2 benefits, from the property of the bankruptcy estate under the applicable federal or state  
3 law. *See* 11 U.S.C. § 522(d). To do so, the debtor must first schedule the claims and then  
4 list them as exempt in the bankruptcy proceeding. *See In re Varney*, 449 B.R. 411, 416-  
5 17 (D. Idaho 2011); 11 U.S.C. §§ 522, 541.

6 The Court has no evidence before it that Plaintiff properly scheduled and  
7 exempted her claims in this lawsuit in her bankruptcy proceeding, or that the trustee  
8 otherwise properly abandoned Plaintiff's present claims, and thus the Court cannot  
9 determine if Plaintiff has standing to bring these claims. The Court will thus ask Plaintiff  
10 to provide evidence demonstrating her standing in this case.

11 IT IS THEREFORE ORDERED that Plaintiff's Application to Proceed in District  
12 Court Without Prepaying Fees or Costs (Doc. 2) is granted. Plaintiff is responsible for  
13 service of the Summons and Complaint on Defendant pursuant to Rule 4 of the Federal  
14 Rules of Civil Procedure, and may serve the Summons and Complaint by waiver under  
15 Rule 4(d).

16 IT IS FURTHER ORDERED that, within 14 days of the date of this Order, Plaintiff  
17 shall file a brief not to exceed five pages and supporting evidence demonstrating that she  
18 scheduled her present claims in her bankruptcy proceeding and that she has standing to  
19 bring these claims in this Court.

20 Dated this 29<sup>th</sup> day of June, 2016.

21  
22   
23 Honorable John J. Tuchi  
24 United States District Judge  
25  
26  
27  
28