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6 **UNITED STATES DISTRICT COURT**

7 EASTERN DISTRICT OF CALIFORNIA

8
9 BRENDA DARLENE WILSON,

10 Plaintiff,

11 v.

12 COMMISSIONER OF SOCIAL SECURITY,

13 Defendant.

Case No. 1:14-cv-01392-SAB

ORDER DENYING PLAINTIFF’S MOTION
TO PROCEED IN FORMA PAUPERIS

(ECF No. 9)

THIRTY-DAY DEADLINE

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15 On September 4, 2014, Plaintiff Leigh Ann Grant (“Plaintiff”) filed the complaint in this
16 action seeking judicial review of the final decision of Defendant Commissioner of Social
17 Security (“Defendant”) denying Plaintiff’s application for benefits under the Social Security Act.
18 (ECF No. 1.) Plaintiff filed an application to proceed in forma pauperis without prepayment of
19 the filing fee on the same day. (ECF No. 2.) The Court denied Plaintiff’s application without
20 prejudice on September 8, 2014, because the application provided by Plaintiff did not contain
21 sufficient information for the Court to determine if she was entitled to proceed in forma pauperis.
22 (ECF No. 6.) At the direction of the Court, on September 25, 2014, Plaintiff filed a long form
23 application to proceed in forma pauperis. (ECF No. 7.)

24 On September 29, 2014, an order issued finding Plaintiff had not demonstrated
25 entitlement to proceed without prepayment of fees and denying Plaintiff’s application to proceed
26 in forma pauperis. Plaintiff was ordered to pay the filing fee within thirty days and advised that
27 failure to pay the filing fee in compliance with the Court’s order would result in this action being
28 dismissed.

1 Rather than paying the fee in compliance with the Court’s order, Plaintiff filed a third
2 application to proceed in forma pauperis including additional dependents and expenses. (ECF
3 No. 9.) Plaintiff was not granted the opportunity to file a third application to proceed in forma
4 pauperis in this action and the application shall be denied.

5 To the extent that Plaintiff seeks reconsideration of the order denying the second
6 application to proceed in forma pauperis, “[a] motion for reconsideration should not be granted,
7 absent highly unusual circumstances, unless the district court is presented with newly discovered
8 evidence, committed clear error, or if there is an intervening change in the controlling law,” and
9 it “may not be used to raise arguments or present evidence for the first time when they could
10 reasonably have been raised earlier in the litigation.” Marlyn Nutraceuticals, Inc. v. Mucos
11 Pharma GmbH & Co., 571 F.3d 873, 880 (9th Cir. 2009) (internal quotations marks and citations
12 omitted) (emphasis in original). Further, Local Rule 230(j) requires, in relevant part, that
13 Plaintiff show “what new or different facts or circumstances are claimed to exist which did not
14 exist or were not shown upon such prior motion, or what other grounds exist for the motion,” and
15 “why the facts or circumstances were not shown at the time of the prior motion.”

16 Plaintiff’s current application to proceed in forma pauperis directly contradicts prior
17 statements that Plaintiff made under penalty of perjury. In the application filed September 25,
18 2014, Plaintiff stated that she had no persons that rely on herself or her spouse for support. (ECF
19 No. 7 at 3.) In the application filed October 27, 2014, Plaintiff states that her son is dependent
20 on her for his support. (ECF No. 9 at 3.) Further, Plaintiff includes additional expenses in the
21 October 27, 2014 application that were not included in the prior application. Plaintiff is not
22 entitled to reconsideration by merely including facts that were known to her and not included in
23 the prior application.

24 If Plaintiff seeks reconsideration of the order denying her application to proceed in forma
25 pauperis, she must file a motion for reconsideration addressing the legal standard discussed
26 above. If such a motion is filed the Court may hold an evidentiary hearing requiring Plaintiff to
27 testify under oath as to the discrepancies in her applications.

28 Accordingly, IT IS HEREBY ORDERED that Plaintiff’s application to proceed in forma

1 pauperis, filed October 27, 2014, is DENIED. The Court shall grant Plaintiff an additional thirty
2 days in which to pay the \$400.00 filing fee and failure to pay the fee in compliance with this
3 order will result in this action being dismissed for failure to comply with a court order.

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5 IT IS SO ORDERED.

6 Dated: November 6, 2014


UNITED STATES MAGISTRATE JUDGE

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