

1 **UNITED STATES DISTRICT COURT**

2 EASTERN DISTRICT OF CALIFORNIA

3 TRACY WEBB,

4 Plaintiff,

5 v.

6 GSF PROPERTIES, et al.,

7 Defendants.

Case No. 1:17-cv-00361-LJO-SAB

ORDER CONSTRUING APPLICATION TO
PROCEED IN FORMA PAUPERIS AS A
MOTION FOR RECONSIDERATION AND
REQUIRING PLAINTIFF TO FILE A LONG
FORM APPLICATION WITHIN
FOURTEEN DAYS

(ECF No. 9)

9 **I. BACKGROUND**10 On March 13, 2017, Plaintiff, proceeding pro se, filed a complaint in this action against
11 GSF Properties, Lindsey Burrow, the Fresno Police Department, and the Fresno Sheriff's
12 Department. Along with the complaint, Plaintiff filed an application to proceed without
13 prepayment of fees. The matter was referred to a United States magistrate judge pursuant to 28
14 U.S.C. § 636(b)(1)(B) and Local Rule 302.15 On March 15, 2017, the magistrate judge issued an order finding that Plaintiff's
16 application to proceed without prepayment of fees was not adequately completed. In her
17 application, Plaintiff indicated that she received income from employment and Social Security
18 benefits but did not indicate the amount received. (Application to Proceed Without Prepayment
19 of Fees 1, ECF No. 2.) Additionally, in response to the question of whether she owned anything
20 of value, Plaintiff responded that she would explain upon request. (Id. at 2.) The magistrate
21 judge found that the information provided on the form was not sufficient to determine if Plaintiff
22 was entitled to proceed without prepayment of fees. (Order Requiring Pl. to File Long Form
23 Appl. To Proceed Without Prepayment of Fees 1, ECF No. 3.) The order required Plaintiff to
24 complete and file a long form application to proceed without prepayment of fees. (Id.) Plaintiff
25 was advised that she must adequately answer the questions on the form and if she was unwilling
26 to complete the form, Plaintiff must pay the filing fee in full. (Id. at 2-3.)27 On March 27, 2017, Plaintiff filed a long form application to proceed without
28

1 prepayment of fees. (Application to Proceed in District Court Without Prepaying Fees or Costs
2 (Long Form), ECF No. 4.) Upon review of the application, the magistrate judge found that
3 Plaintiff had again not adequately completed the form. (Findings and Recommendations
4 Recommending Denying Plaintiff's Application to Proceed Without Prepayment of Fees 2, ECF
5 No. 5.) Specifically, in response to the question asking the average income received in the prior
6 twelve months, Plaintiff indicated that it "depends." Also, despite indicating that she received
7 Social Security benefits in her prior application, Plaintiff did not include any amount for
8 retirement or disability income. (*Id.* at 2.) The magistrate judge found that Plaintiff had not
9 demonstrated that she was entitled to proceed without prepayment of fees and recommended
10 denying Plaintiff's application. (*Id.* at 2.) On May 4, 2017, this Court adopted the findings and
11 recommendations and ordered Plaintiff to pay the filing fee within thirty days. (ECF No. 8.)

12 On May 17, 2017, Plaintiff filed a third application to proceed without prepayment of
13 fees and several notes to the Court. (ECF No. 9.) The Court construes Plaintiff's application as
14 a request for reconsideration.

II. LEGAL STANDARD

Under Rule 60(b) of the Federal Rules of Civil Procedure, a district court “may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party; (4) the judgment is void; (5) the judgment has been satisfied, released or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or 6) any other reason that justifies relief. “A motion for reconsideration should not be granted, absent highly unusual circumstances, unless the district court is presented with newly discovered evidence, committed clear error, or if there is an intervening change in the controlling law.” Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co., 571 F.3d 873, 880 (9th Cir. 2009) (internal punctuation and citations omitted).

1 Requests for reconsideration are also governed by Local Rule 230(j) which provides that
2 a party seeking reconsideration must set forth the material facts and circumstances surrounding
3 the motion for reconsideration, including “what new or different facts or circumstances are
4 claimed to exist which did not exist or were not shown upon such prior motion, or what other
5 grounds exist for the motion;” and “why the facts or circumstances were not shown at the time of
6 the prior motion.”

7 **III. DISCUSSION**

8 In her current application, Plaintiff indicates that she has “no place to sleep.”
9 (Application to Proceed in District Court Without Prepaying Fees or Costs (Long Form) 1, ECF
10 No. 9.) Plaintiff states she will be moving into an apartment within a few weeks. (Id. at 5.)
11 Plaintiff also says that she is in Nevada.¹ (Letter attached at p. 8.) Therefore, it appears that
12 Plaintiff may be homeless at this time.

13 The application requires Plaintiff to indicate the average monthly income she has
14 received during the past twelve months. Plaintiff does now indicate that she receives \$895
15 monthly in disability payments. (Application to Proceed in District Court Without Prepaying
16 Fees or Costs (Long Form) 1.) However, other aspects of her income remain unclear. Near the
17 space where an applicant should indicate average monthly income over the past 12 months from
18 self-employment, she has written: “only had 1 business \$120.” Id. It is unclear what this means.
19 In addition, in the field set aside for employment history over the past two years, Plaintiff
20 indicates she was employed by “Truly Iam Blessed” from 2015 through 2017 and indicates she
21 earned between \$300 to \$500 per month from that job. (Id. at 2.) However, it is unclear whether
22 she still earns that income or at what point that income stopped. Plaintiff’s application also states
23 that she will provide amounts after she receives taxes and income. (Id. at 1.) Further, Plaintiff
24 indicated that she pays life insurance and credit card payments but did not indicate the average
25 monthly amounts. (Id. at 4.) Finally, Plaintiff has failed to provide any information about the
26 extent of any credit card payments she may be making to her listed visa account. Again, Plaintiff

27 ¹ Plaintiff is advised that pursuant to the Local Rules of the Eastern District of California, that she is under a
28 continuing duty to notify the Clerk of any change of address or telephone number. L.R. 182(f). “Absent such
notice, service of documents at the prior address of the attorney or pro se party shall be fully effective.” Id.

1 has not adequately completed the application and it does not contain sufficient information for
2 the Court to find that she is entitled to proceed without prepayment of fees in this action.

3 The Court shall grant Plaintiff **one final opportunity** to file an application to proceed
4 without prepayment of fees. In completing the application, Plaintiff must specify exactly what
5 she makes each month from each source and the amount of all of her expenses, including her
6 monthly credit card debt. If Plaintiff fails to adequately complete the application, her application
7 will be denied.

8 **IV. CONCLUSION AND ORDER**

9 Accordingly, IT IS HEREBY ORDERED that:

- 10 1. Plaintiff's application to proceed without prepayment of fees, filed May 17, 2017,
11 is construed as a motion for reconsideration;
- 12 2. Plaintiff's motion for reconsideration is granted in part;
- 13 3. The Clerk of the Court is directed to forward a Notice of Change of Address form
14 and an Application to Proceed in District Court Without Prepaying Fees or Costs
15 (Long Form) – AO 239 to Plaintiff;
- 16 4. Within fourteen (14) days of the date of this order, Plaintiff shall either (a) pay the
17 \$400.00 filing fee for this action, or (b) complete and file the enclosed
18 Application to Proceed in District Court Without Prepaying Fees or Costs (Long
19 Form) – AO 239; and
- 20 5. If Plaintiff fails to comply with this order, this action shall be dismissed.

21 IT IS SO ORDERED.
22

23 Dated: May 23, 2017

24 /s/ Lawrence J. O'Neill
25 UNITED STATES CHIEF DISTRICT JUDGE
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