

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ROBERT MYERS,

Plaintiff,

No. C 07-2150 BZ

v.

CITY AND COUNTY OF SAN FRANCISCO,
et al.,**ORDER DENYING APPLICATION
TO PROCEED IN FORMA PAUPERIS
AND EMERGENCY APPEAL**Defendants.

Before the court is plaintiff's application to proceed in forma pauperis ("IFP"), filed pursuant to 28 U.S.C. § 1915, and plaintiff's emergency appeal from a ruling issued earlier today by Magistrate Judge Zimmerman. Specifically, plaintiff seeks this court's reconsideration of the magistrate judge's order denying plaintiff's motion for a temporary restraining order.

Preliminarily, the court notes that plaintiff's IFP request and emergency appeal come before it as a general duty matter. This is inappropriate, considering that the court's general duty authority extends to cases and filings for which there is no presiding judge available, and Magistrate Judge Zimmerman is present and available.

More importantly, however, the docket reflects that plaintiff has consented to the magistrate judge's jurisdiction over this case. As such, plaintiff is not entitled to object to, or appeal from, the magistrate judge's ruling by seeking this court's review of the ruling. Rather, the proper remedy available to plaintiff is either to file a motion for reconsideration before the magistrate judge, or to avail himself of any appeal to which he is entitled in the Ninth Circuit.

Accordingly, and for these reasons, the court hereby DENIES plaintiff's 'emergency

1 appeal.' Furthermore, in view of the above reasons, the court additionally concludes that
2 plaintiff's appeal "lacks an arguable basis either in law or in fact," such that plaintiff's
3 application to proceed in forma pauperis is also DENIED as frivolous. See, e.g., Neitzke v.
4 Williams, 490 U.S. 319, 325 (1989)(district court may deny IFP status where complaint is
5 frivolous).

6 **IT IS SO ORDERED.**

7 Dated: April 18, 2007



PHYLLIS J. HAMILTON
United States District Judge