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

CHUKWUMA E. AZUBUKO,

Plaintiff,

vs.

ROBERT F. CHAPSKI; CYNTHIA M.  
GARRATY,

Defendants.

CASE NO. 11 CV 2522 MMA (BLM)

**ORDER DENYING PLAINTIFF'S  
MOTION FOR  
RECONSIDERATION**

[Doc. No. 8]

Currently pending before the Court is Plaintiff's motion for reconsideration of the Court's November 16, 2011 Order denying his motion to proceed *in forma pauperis*, and dismissing his complaint with prejudice [Doc. No. 3]. For the reasons set forth below, the Court **DENIES** Plaintiff's motion for reconsideration.

**BACKGROUND**

On October 28, 2011, Plaintiff Chukwuma E. Azubuko, proceeding *pro se*, initiated this action by filing a complaint against Defendants Robert F. Chapski and Cynthia M. Garraty. [Doc. No. 1.] Plaintiff contemporaneously filed a motion for leave to proceed *in forma pauperis* ("IFP"). [Doc. No. 2.] On November 16, 2011, the Court issued an order denying Plaintiff's motion to

1 proceed IFP, dismissing the complaint as frivolous, and finding that the Court lacks subject matter  
2 jurisdiction over Plaintiff's claims and venue is improper in the Southern District of California.  
3 [Doc. No. 3.] On January 4, 2012, Plaintiff filed the pending motion for reconsideration under  
4 Federal Rule of Civil Procedure 60(b).

### 5 LEGAL STANDARD

6 Rule 60(b) of the Federal Rules of Civil Procedure provides for reconsideration where one  
7 or more of the following is shown: (1) mistake, inadvertence, surprise or excusable neglect; (2)  
8 newly discovered evidence which by due diligence could not have been discovered before the  
9 court's decision; (3) fraud by the adverse party; (4) voiding of the judgment; (5) satisfaction of the  
10 judgment; (6) any other reason justifying relief. Fed. R. Civ. P. 60(b); *School Dist. 1J v. A Cand S*  
11 *Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993). Plaintiff moves for reconsideration under "Rule  
12 60(b)(4)(6)." [Doc. No. 8, p.4.]

13 With respect to subparagraph (4), "[t]he Ninth Circuit has consistently held that a final  
14 judgment is void for purposes of Rule 60(b)(4) only if the court that considered it lacked  
15 jurisdiction, either as to the subject matter of the dispute or over the parties to be bound, or acted  
16 in a manner inconsistent with due process of law." *Jimena v. UBS AG Bank, Inc.*, 2011 U.S. Dist.  
17 LEXIS 68560 \*24 (E.D. Cal. June 27, 2011) (citing *In re Sasson*, 424 F.3d 864, 876 (9th Cir.  
18 2005) (quoting *United States v. Berke*, 170 F.3d 882, 883 (9th Cir. 1999)). "A judgment is not  
19 void within the meaning of Rule 60(b)(4) merely because it is erroneous." *Id.* (citing *In re Sasson*,  
20 424 F.3d at 875). Under subparagraph (6), Plaintiff must show that there are extraordinary  
21 grounds justifying relief; mere dissatisfaction with the court's order or belief that the court is  
22 wrong in its decision are not adequate grounds for relief. *Twentieth Century -- Fox Film Corp. v.*  
23 *Dunnahoo*, 637 F.2d 1338, 1341 (9th Cir. 1981).

### 24 DISCUSSION

#### 25 **I. RECONSIDERATION OF PLAINTIFF'S IFP STATUS IS NOT WARRANTED**

26 Plaintiff first urges the Court to reconsider its denial of his motion to proceed IFP on the  
27 ground that individuals should not be denied access to the Courts solely because they are unable to  
28 pay the filing fee. [Doc. No. 8, p.4.] Contrary to Plaintiff's suggestion, he was not denied access

1 to the Court because he is unable to pay. Rather, the Court carefully considered Plaintiff's motion  
2 to proceed IFP and determined it was incomplete, and that Plaintiff failed to demonstrate he lacked  
3 the financial resources to pay the filing fee. [Doc. No. 3, p.2.]

4 As stated in the Court's challenged order, a party need not be completely destitute to  
5 proceed *in forma pauperis*. *Adkins v. E.I. DuPont de Nemours & Co.*, 335 U.S. 331, 339-40  
6 (1948). However, proceeding IFP is a privilege, not a right. *Smart v. Heinze*, 347 F.2d 114, 116  
7 (9th Cir. 1965). "[T]he same even-handed care must be employed to assure that federal funds are  
8 not squandered to underwrite, at public expense, either frivolous claims or the remonstrances of a  
9 suitor who is financially able, in whole or in material part, to pull his own oar." *Temple v.*  
10 *Ellerthorpe*, 586 F. Supp. 848, 850 (D.R.I. 1984). Plaintiff's motion for reconsideration does not  
11 challenge the Court's analysis of his financial resources, nor provide any additional information  
12 that might warrant a different result. Accordingly, reconsideration of the Court's order denying  
13 Plaintiff's motion to proceed IFP is not appropriate under Rule 60(b)(4) or (b)(6).

14 However, even if the Court granted Plaintiff's request to proceed IFP, the action still could  
15 not proceed for at least three reasons, each of which the Court identified in its November 16 Order.  
16 First, Plaintiff's complaint is frivolous, as it is entirely incomprehensible and does not state any  
17 claim upon which relief can be granted. Second, the complaint does not provide any legally  
18 cognizable ground for the Court to exercise jurisdiction over Plaintiff's claims. Third, even if  
19 federal jurisdiction existed, venue is not proper in the Southern District of California. The Court,  
20 again, addresses each of these deficiencies below.

## 21 **II. PLAINTIFF'S COMPLAINT IS INCOMPREHENSIBLE**

22 Plaintiff appears to dispute the Court's conclusion that his complaint does not satisfy  
23 Federal Rule of Civil Procedure 8(a)(2), requiring a short and plain statement demonstrating he is  
24 entitled to relief. [Doc. No. 8, p.2.] Plaintiff also asserts he should have been given leave to  
25 amend. [*Id.*] The Court disagrees. Although the Court must construe a *pro se* litigant's pleadings  
26 broadly, dismissal without leave to amend is appropriate where "it is absolutely clear that the  
27 deficiencies of the complaint could not be cured by amendment." *Franklin v. Murphy*, 245 F.2d  
28 1221, 1228 n.9 (9th Cir. 1984). Just like his complaint, Plaintiff's motion for reconsideration is

1 almost entirely incomprehensible. For example, Plaintiff states: “The Court’s take vis-a-vis the  
2 sub-head was untrue! Should the Plaintiff shave his teeth for compliance?” [*Id.*] The Court is  
3 simply unable to decipher what type of relief Plaintiff seeks, or any facts evidencing that leave to  
4 amend would not be futile.

5 In addition, the Court’s prior Order identified several pleading deficiencies beyond its  
6 Rule 8 concerns. [*See* Doc. No. 3, p.2-4.] The Court declines to reiterate that discussion here, as  
7 Plaintiff’s pending motion still fails to identify any facts or coherent theories of liability. It  
8 remains entirely unclear what kind of action Plaintiff desires to bring. Moreover, Plaintiff does  
9 not explain why reconsideration is appropriate, nor does he even attempt to identify facts that he  
10 could allege to cure the noted deficiencies in his complaint. Accordingly, the Court concludes it  
11 correctly dismissed Plaintiff’s complaint with prejudice and without leave to amend.

12 Even if the Court could be persuaded that Plaintiff might be able to state a claim if granted  
13 leave to amend, Plaintiff’s claims cannot proceed in this Court because it lacks subject matter  
14 jurisdiction over this action. *Steel Co. v. Citizens for a Better Environ.*, 523 U.S. 83, 94 (1998)  
15 (“Without jurisdiction the court cannot proceed at all in any cause. Jurisdiction is power to declare  
16 the law, and when it ceases to exist, the only function remaining to the court is that of announcing  
17 the fact and dismissing the cause.”) (quoting *Ex parte McCardle*, 74 U.S. (7 Wall.) 506, 514  
18 (1868)).

### 19 **III. THE COURT LACKS SUBJECT MATTER JURISDICTION**

20 Plaintiff asserts the Court should reconsider its conclusion that subject matter jurisdiction  
21 is lacking, and identifies several cases that purportedly demonstrate this Court can exercise  
22 jurisdiction over his claims. [Doc. No. 8, p.5-7.] Plaintiff’s references are entirely unhelpful, as  
23 they do not bear on the facts of this case. “Federal district courts are courts of limited jurisdiction,  
24 possessing only that power authorized by Constitution and statute. We presume that a cause lies  
25 outside this limited jurisdiction, and the burden of establishing the contrary rests upon the party  
26 asserting jurisdiction.” *K2 Am. Corp. v. Roland Oil & Gas, LLC*, 653 F.3d 1024, 1027 (9th Cir.  
27 2011) (citations and internal marks omitted). Neither Plaintiff’s complaint nor his motion for  
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1 reconsideration state a legally cognizable ground for the Court to exercise jurisdiction over  
2 Plaintiff's unintelligible allegations. Accordingly, reconsideration is not warranted.

3 **IV. VENUE IS NOT PROPER IN THE SOUTHERN DISTRICT OF CALIFORNIA**

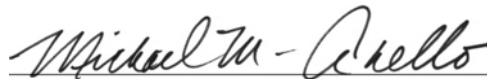
4 Lastly, even assuming federal jurisdiction existed, Plaintiff's action still cannot proceed in  
5 this district. Neither Plaintiff's complaint nor his motion for reconsideration identifies a single  
6 fact that suggests Plaintiff's grievances have any connection to the Southern District of California.  
7 *See generally*, 28 U.S.C. § 1391. As stated previously, Plaintiff's conclusory assertions that venue  
8 exists carry no weight. A careful review of the record reveals no discernable link to California, let  
9 alone the Southern District. [*See* Doc. No. 3, p.4 ("Defendants reside in Tennessee and  
10 Connecticut, and Plaintiff resides in Massachusetts . . . none of the parties reside in California, nor  
11 does it appear any discernable conduct occurred in this district").] The Court therefore declines to  
12 reconsider its ruling that venue is improper.

13 **CONCLUSION**

14 For the reasons set forth above, the Court **DENIES** Plaintiff's motion for reconsideration.  
15 [Doc. No. 8.] The case shall remain closed; no further filings will be accepted.

16 **IT IS SO ORDERED.**

17 DATED: February 2, 2012



18 Hon. Michael M. Anello  
19 United States District Judge  
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