

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 08-cv-02334-BNB

GWEN BERGMAN,

Plaintiff,

v.

HOWARD KIEFFER,

Defendant.

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO

SEP 08 2009

GREGORY C. LANGHAM
CLERK

ORDER OF DISMISSAL

Plaintiff, Gwen Bergman, is a prisoner in the custody of the United States Bureau of Prisons who currently is confined at the Federal Medical Center (FMC) Carswell in Fort Worth, Texas. She initiated this action *pro se* by filing a Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 and a Prisoner Complaint.

On December 9, 2008, the Court dismissed the complaint and the instant action without prejudice for failure to cure certain deficiencies in the case. On December 31, 2008, the Court denied Ms. Bergman's motion to reconsider. On June 19, 2009, the United States Court of Appeals for the Tenth Circuit (Tenth Circuit) reversed the December 9 dismissal, finding that Ms. Bergman attempted to cure any remaining deficiencies by filing a certified copy of her trust fund account statement with the motion to reconsider. On July 13, 2009, the Tenth Circuit mandate issued.

On July 23, 2009, this Court reinstated the instant action. Also on July 23, Magistrate Judge Craig B. Shaffer granted Ms. Bergman leave to proceed pursuant to

28 U.S.C. § 1915 and ordered her within thirty days either to pay an initial partial filing fee of \$24.00 or to show cause as directed why she has no assets and no means by which to pay the designated initial partial filing fee. He informed Ms. Bergman that in order to show cause she must file a current certified copy of her trust fund account statement. Magistrate Judge Shaffer warned Ms. Bergman that if she failed to comply with the July 23 order as directed, the complaint and the action would be dismissed without further notice.

On August 27, 2009, instead of complying with the July 23, 2009, order, Ms. Bergman filed a motion titled "Pro Se Motion for: Notice to Proceed Upon Tenth Circuit Mandate Without Payment or Change Venue Upon Conflicts of Interest to California or Utah: Return Attorney Fees, Expenses, Losses [sic] and Damages: and Provide Counsel." Although Ms. Bergman alleges in the motion that she is unable to pay the initial partial filing fee, she has failed within the time allowed to comply with the directives of the July 23 order by showing cause as directed why she has no assets and no means by which to pay the designated initial partial filing fee. Therefore, Ms. Bergman has failed within the time allowed either to pay the \$24.00 initial partial filing fee or to show cause as directed why she is unable to do so. Accordingly, it is

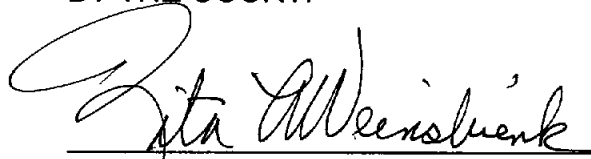
ORDERED that the complaint and the action are dismissed without prejudice for the failure of Plaintiff, Gwen Bergman, within the time allowed, to pay the initial partial filing fee of \$24.00 or to show cause as directed why she has no assets and no means by which to pay the designated initial partial filing fee. It is

FURTHER ORDERED that the motion titled "Pro Se Motion for: Notice to Proceed Upon Tenth Circuit Mandate Without Payment or Change Venue Upon

Conflicts of Interest to California or Utah: Return Attorney Fees, Expenses, Losses [sic] and Damages: and Provide Counsel" is denied as moot.

DATED at Denver, Colorado, this 1st day of Sept, 2009.

BY THE COURT:



ZITA L. WEINSHIENK, Senior Judge
United States District Court

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

CERTIFICATE OF MAILING

Civil Action No. 08-cv-02334-BNB

Gwen Bergman
Reg No. 32578-013
Federal Medical Center
P.O. Box 27137
Fort Worth, TX 76127

I hereby certify that I have mailed **ORDER AND JUDGMENT** to the above-named individuals on 9/2/09

GREGORY C. LANGHAM, CLERK

By: 

Deputy Clerk