UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
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In re NASSAU COUNTY STRIP SEARCH CASES,

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**MEMORANDUM AND ORDER**
99-CV-2844(DRH)

**APPEARANCES:**

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**HURLEY, Senior District Judge:**

By Order dated April 23, 2010, the Court denied the application of Marilyn Bloch ("Bloch"), proceeding pro se, to become a named plaintiff in this class action. Subsequent to that Order, the Court received additional materials relating to that application from Bloch (see Dkt. Nos. 327-329, 337), which the Court construed as a request for reconsideration and denied by Order dated June 7, 2010. Bloch now requests permission to proceed *in forma pauperis* on her interlocutory appeal to the Second Circuit. For the reasons that follow, the application is denied.

## *DISCUSSION*

### I. *Standard of Review*

A motion to proceed *in forma pauperis* on appeal must be made in the first instance to the district court. *See* Fed. R. App. P. 24(a). An appeal may not be taken *in forma pauperis* if the district court certifies that the appeal is not taken in good faith. 28 U.S.C. § 1915(a)(3); Fed. R. App. P. 24(a)(4)(B). The Second Circuit has instructed:

> Generally an application for leave to appeal *in forma pauperis* will have sufficient substance to warrant consideration only if, in addition to an adequate showing of indigence and of citizenship, it identifies with reasonable particularity the claimed errors which will be the basis for the appeal. If these requirements are satisfied, and if on consideration the trial judge is conscientiously convinced that there is no substantial question for review and that an appeal will be futile, or if he is convinced that there is no reasonable basis for the claims of alleged error, it is the duty of the trial judge, albeit not a pleasant duty, to certify that the appeal is not taken in good faith.

*United States v. Farley*, 238 F.2d 575, 576 (2d Cir. 1956) (internal citations and quotation marks omitted). "'This threshold level for permitting persons to proceed *in forma pauperis* is not very great and doubts about the substantiality of the issues presented should normally be resolved in

the applicant's favor.'" *Bishop v. Henry Modell & Co.,* 2010 WL 1790385, at *1 (S.D.N.Y. May 4, 2010) (quoting *Miranda v. United States*, 458 F.2d 1179, 1181 (2d Cir. 1972)). "Nevertheless, 'good faith is judged by an objective standard, and if an appeal is frivolous it is not taken in good faith.'" *Bishop*, 2010 WL 1790385, at *1 (quoting *Gomez v. United States*, 371 F. Supp. 1178, 1179 (S.D.N.Y. 1974)).

## II. *Bloch's Request to Appeal In Forma Pauperis is Denied*

Here, Bloch's application to proceed *in forma pauperis* does not include any of the "the claimed errors which will be the basis for the appeal." *Farley*, 238 F.2d at 576. Rather, Bloch simply states that she appeals "from the decision of Judge Hurley entered in the action on June 7, 2010 denying her to be lead plaintiff . . . ." (Bloch Notice of Appeal, undated but received in Chambers on June 22, 2010 (Dkt. No. 342).) Given that Bloch has failed to present any ground for appeal, there is no basis for the Court to grant *in forma pauperis* status for appeal purposes. However, given Bloch's *pro se* status, the Court has nonetheless reviewed the record. After careful review, and for the reasons stated in the Court's April 23, 2010 and June 7, 2010 Orders, the Court finds that Bloch's requests to be a named plaintiff and/or to intervene in this class action were properly denied and there is no substantial question for review. Accordingly, the Court certifies that any appeal would not be taken in good faith, would be an improper interlocutory appeal and thus the request to proceed *in forma pauperis* on appeal is denied. Further requests to proceed *in forma pauperis* should be directed to the United States Court of Appeals for the Second Circuit in accordance with Rule 24 of the Federal Rules of Appellate Procedure.

**SO ORDERED.**

Dated: Central Islip, N.Y.
September 29, 2010

Denis R. Hurley,
United States District Judge