

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

YOEL WEISSHAUS	X	
	:	
Plaintiff	:	
	:	Case: 11-cv-6616-LAP
vs.	:	
	:	
THE PORT AUTHORITY OF NEW YORK	:	
AND NEW JERSEY; et al.,	:	
	:	
Defendants.	:	
	X	

**AFFIRMATION IN SUPPORT TO WITHDRAW IN FORMA PAUPERIS
APPLICATION WITH STATUS AND FOR PAYMENT OF FEES**

Yoel Weisshaus (“Weisshaus”) makes the following affirmation:

1. I, Yoel Weisshaus, am the plaintiff in this action.
2. I affirm the following as truthful to the best of my knowledge.
3. The complaint in this action was filed September 19, 2011.
4. At the time of filing this complaint, Weisshaus had no available funds to pay the filing fees involved with commencing this action. Therefore,
5. Weisshaus entered an application to proceed in forma pauperis together with filing the complaint in this action.
6. The Court entered an order on October 24, 2011 granting Weisshaus’ application of in forma pauperis.
7. This case was subsequently dismissed sua sponte prior to the issuance of a summons or amending the complaint.

8. The Court of Appeals for the Second Circuit remanded this case for further proceedings on September 20, 2012.

9. Before making any application to proceed further with this action, Weisshaus' move the Court to withdraw the in forma pauperis status to enable him to pay the filing fee.

10. Weisshaus makes this application timely to withdraw in forma pauperis for all purposes.

11. Weisshaus raised money to pay the filing fee.

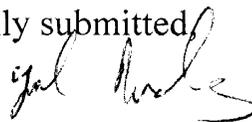
12. Pursuant to the Federal Rules of Civil Procedure Rule 11(b), I certify before presenting this motion I conducted a reasonable inquiry, and this motion is intended only to withdraw Weisshaus' in forma pauperis application with status as to enable him to pay the fees of the Court and no adversary can be prejudiced by grant of this motion.

13. I certify the foregoing as true to the best of my knowledge.

Bergen NJ,

Dated: October 11, 2012

Respectfully submitted,



Yoel Weisshaus
516 River Road 6
New Milford NJ, 07646
917.335.1933

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X
YOEL WEISSHAUS, :
 :
 Plaintiff, : Case: 11 cv. 6616 (LAP)
 :
 vs. :
 :
 THE PORT AUTHORITY OF NEW YORK : ORDER (Proposed)
 AND NEW JERSEY, et al, :
 :
 Defendants. :
----- X

LORETTA A. PRESKA, Chief United States District Court Judge:

By motion dated October 11, 2012, plaintiff Yoel Weisshaus moved to withdraw his in forma pauperis affidavit and for payment of fees.

IT IS HEREBY ORDERED the motion is GRANTED upon the entry of payment to the Clerk of the Court.

IT IS FURTHER ORDERED that Weisshaus make payment to the Clerk of the Court within 14-days to the entry of this order.

SO ORDERED:

Dated:

New York, New York

LORETTA A. PRESKA
Chief United States District Court Judge

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

YOEL WEISSHAUS	X	
	:	
Plaintiff	:	
	:	
vs.	:	Case: 11-cv-6616-LAP
	:	
THE PORT AUTHORITY OF NEW YORK	:	
AND NEW JERSEY, et al.,	:	
	:	
Defendants.	:	
	X	

**MEMORANDUM OF LAW IN SUPPORT OF MOTION TO
WITHDRAW THE IN FORMA PAUPERIS APPLICATION
WITH ITS STATUS AND FOR PAYMENT OF FEES**

Plaintiff, Yoel Weisshaus (“Weisshaus”), files this memorandum in support of his motion withdrawing the in forma pauperis application with its status and allow the payment of fees, stating:

ISSUES

1. The issue before the court is whether Weisshaus can withdraw his in forma pauperis application and pay the outstanding filing fees before proceeding with the Remand of this case.
2. If Weisshaus can pay the filing fees, he should be able to withdraw his application for in forma pauperis.

ARGUMENT

3. The foregoing case is pending before the Court.

4. No summons has been yet issued in this case.
5. At the time of filing this action, Weisshaus did not have available funds to pay the fees, and therefore sought to proceed in forma pauperis and the application was granted.
6. Weisshaus' affidavit stated that he is unable to pay the filing fees when his unemployment benefits had ended. "[A]n [in forma pauperis] affidavit is sufficient which states that one cannot because of his poverty 'pay or give security for the costs and still be able to provide' himself and dependents 'with the necessities of life.'" *Adkins v. E.I. DuPont de Nemours & Co.*, 335 U.S. 331, 339 (1948)
7. However, Weisshaus move the Court to vacate the in forma pauperis affidavit on the ground that he raised the money to pay for the fees outlined on the court's website <http://www.nysd.uscourts.gov/fees>.
8. Weisshaus has no need any further, in *good faith*, to proceed in forma pauperis when the Court fees can be paid.
9. 28 U.S.C § 1915(a)(1) requires that in forma pauperis is considered "by a person who submits an affidavit that includes a statement of all assets... that the person is unable to pay such fees or give security therefor."
10. Being that Weisshaus raised the money to proceed in forma pauperis, he can longer say in good faith that he "is unable to pay such fees." Therefore, he is bond

by the principle of good faith and the penalties of perjury to move the Court to vacate his in forma pauperis application before the continuing of this action.

11. Other courts have held that a “plaintiff who had been granted leave to proceed in forma pauperis had continuing obligation to notify [the] court of any change in his financial condition” and “plaintiff’s in forma pauperis status could be revoked based on postfiling change in his financial status.” *Murphy v. Jones*, 801 F. Supp. 283 (E.D. Mo. 1992) “When a litigant’s financial condition improves during the course of the litigation, the district court may require him or her to pay fees and costs.” *Lewis v. Ctr. Mkt.*, 378 F. App’x 780, 785 (10th Cir. 2010) “[U]nder 28 U.S.C. § 1915(a), a federal court should redetermine IFP status each time a new petition is filed” citing *Carter v. United States*, 733 F.2d 735, 737 (10th Cir.1984). *Holmes v. Hardy*, 852 F.2d 151, 153 (5th Cir. 1988)

12. Although case law allows reconsideration of in forma pauperis status when financial situations improve, Weisshaus does not say nor can he assert that his financial status has improved in any way. For sake of clarity, however, he asserts that he has raised the money needed for the Court fees.

13. Being that Weisshaus has obtained money to pay the Court fees, he can no longer maintain in good faith his affidavit to proceed in forma pauperis. Therefore, Weisshaus moves the court to withdraw his in forma pauperis application in all

aspects, and asks the Court to grant his motion, and to enter an order to pay the Court fees within fourteen days to the grant of this motion.

WHEREFORE, plaintiff prays the Court will enter an order withdrawing the in forma pauperis affidavit in all aspects and order payment of fees within fourteen days of grant of this motion.

Dated: October 11, 2012


Yoel Weisshaus

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

YOEL WEISSHAUS,	X	
	:	
Plaintiff,	:	
	:	Case: 11-cv-6616 (LAP)
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	:	
THE PORT AUTHORITY OF NEW YORK	:	
AND NEW JERSEY, et al.,	:	
	:	
Defendants.	:	
	X	

AFFIRMATION OF SERVICE

I, YOEL WEISSHAUS make the following affirmation:

1. I, effected service on Defendant-Appellee Port Authority of New York and New Jersey, at 225 Park Avenue South 13th Floor, New York NY, 10003 by certified mail of the attached Notice of Motion To Withdraw The In Forma Pauperis Application With Status And For Payment Of Fees with its accompanying documents on October 11, 2012 within the State of New York.

7009 2250 0003 3557 6987

2. I declare that the foregoing is true and correct.

Dated: October 11, 2012
Bergen County, New Jersey


Yoel Weisshaus
516 River Road 6
New Milford NJ, 07646