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**UNITED STATES DISTRICT COURT**  
EASTERN DISTRICT OF CALIFORNIA

KITTI RUTH PAYNE  
a/k/a KITTI R. POWER,

Plaintiff,

v.

PUBLISHERS CLEARING HOUSE, INC.;  
MARGARET CROSSAN, DAVE SAYER,  
PCH AFFILIATES d/b/a PCH LOTTO a/k/a  
PUBLISHING CLEARING HOUSE; PCH;  
and THE CLEARING HOUSE,

Defendants.

**Case No. 1:16-cv-010165-DAD-SKO**

**FINDINGS AND RECOMMENDATIONS  
THAT PLAINTIFF’S COMPLAINT BE  
DISMISSED WITH PREJUDICE AND  
WITHOUT LEAVE TO AMEND**

**Objections Due: 28 Days**

(Doc. No. 4)

**I. BACKGROUND**

On September 25, 2015, Plaintiff Kitti Ruth Payne (“Plaintiff”), proceeding pro se and in forma pauperis, filed an action against Publishers Clearing House, Inc., before this Court. *See Payne v. Publishers Clearing House*, No. 1:15-cv-01453-AWI-SKO (“*PCH I*”). On December 17, 2015, the undersigned recommended *PCH I* be dismissed without leave to amend, for failure to recite a plain and concise statement of allegations under Fed. R. Civ. P. Rule 8. (*PCH I*, Doc. 13.) On January 22, 2016, the assigned district judge adopted the undersigned’s findings and recommendation in full and dismissed *PCH I* with prejudice and without leave to amend. (*PCH I*,

1 Doc. 14.) Judgment was entered on January 22, 2016. (*PCH I*, Doc. 15.)

2 In a civil case, a party must file their notice of appeal to the Circuit Court with the district  
3 clerk “within 30 days after entry of the judgment or order appealed from.” Fed. R. App. P. 4. The  
4 deadlines are mandatory and jurisdictional. *See Browder v. Dir., Dep’t of Corrections*, 434 U.S.  
5 257 (1978). Here, more than thirty days have passed since the entry of judgment in *PCH I*;  
6 therefore, the judgment in *PCH I* is final.

7 On February 4, 2016, Plaintiff, proceeding pro se and *in forma pauperis*, filed the instant  
8 action against Publishers Clearing House, Inc., before this Court. *See Payne v. Publishers*  
9 *Clearing House*, No. 1:16-cv-00165-DAD-SKO (“*PCH II*”). In cases where the plaintiff is  
10 proceeding *in forma pauperis*, the Court is required to screen each case, and must dismiss the case  
11 at any time if the Court determines that the allegation of poverty is untrue, or the Court determines  
12 that the action or appeal is frivolous or malicious, fails to state a claim upon which relief may be  
13 granted, or seeks monetary relief against a defendant who is immune from such relief. 28 U.S.C.  
14 § 1915(e)(2). Plaintiff’s Complaint in *PCH II* is currently before the Court for screening pursuant  
15 to 28 U.S.C. § 1915(e)(2). For the reasons below, the undersigned finds and recommends that  
16 Plaintiff’s claims are barred by the doctrine of res judicata.

## 17 II. PLAINTIFF’S CLAIMS

18 The Amended Complaint in *PCH I* and the Complaint in the newly-filed *PCH II* are  
19 virtually indistinguishable from one another. (*Compare PCH I*, Doc. 6, *with PCH II*, Doc. 1.) In  
20 *PCH I*, Plaintiff alleged claims for negligence, “harm,” and fraud against Publishers Clearing  
21 House based on the contents of an October 2011 email from an unnamed third party representing  
22 itself as an affiliate of Publishers Clearing House. (*PCH I*, Doc. 6, pp. 8-9; Exh. 1  
23 (unauthenticated copy of October 2011 email).) In *PCH II*, Plaintiff alleges claims of negligence,  
24 “resulting harm,” “continuation of negligence,” and fraud against Publishers Clearing House based  
25 on the contents of an October 2011 email from an unnamed third party representing itself as an  
26 affiliate of Publishers Clearing House. (*PCH II*, Doc. 1, pp. 6-7; Att. 1 (unauthenticated copy of  
27 October 2011 email).) The defendants named in *PCH II* are the same as those previously named  
28 in *PCH I*. (*Compare PCH I*, Doc. 6, *with PCH II*, Doc. 1.)



1           These findings and recommendations are submitted to the district judge assigned to this  
2 action, pursuant to 28 U.S.C. § 636(b)(1)(B) and this Court’s Local Rule 304. Within twenty-  
3 eight (28) days of service of this recommendation, any party may file written objections to these  
4 findings and recommendations with the Court and serve a copy on all parties. The document  
5 should be captioned “Objections to Magistrate Judge’s Findings and Recommendations.” The  
6 district judge will review the magistrate judge’s findings and recommendations pursuant to  
7 28 U.S.C. § 636(b)(1)(C). The parties are advised that failure to file objections within the  
8 specified time may result in the waiver of rights on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834,  
9 839 (9th Cir. 2014).

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11 IT IS SO ORDERED.

12 Dated: March 4, 2016

/s/ Sheila K. Oberto  
UNITED STATES MAGISTRATE JUDGE

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