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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

SYLVIA PORTUGAL,

Plaintiff,

v.

WESTERN WORLD INSURANCE
COMPANY and DOES 1 through 50,

Defendants.

No. 2:10-cv-02498-MCE-AC

ORDER

In its Memorandum and Order dated August 22, 2012 (ECF No. 12), this Court addressed the merits of the Motion for Summary Judgment and Summary Adjudication (ECF No. 8) filed on behalf of Defendant Western World Insurance Company (“Western”). The Court found Plaintiff’s lawsuit subject to collateral estoppel both on grounds that the issues and parties subject to an earlier action filed in state court were identical. Because the state court’s decision was on appeal before California’s Third Appellate District at the time that Memorandum and Order was issued, however, and given the fact that application of collateral estoppel also requires a final judgment on the merits, this Court stayed the proceedings pending final judgment in the state court action, Portugal v. Western World Insurance Company, et al., Case No. 34-20099-0034576-CU-BT-GDS.

1 On October 6, 2016, Western World submitted a Status Report (ECF No. 34)
2 notifying the Court that the Third Appellate District issued an Order affirming the state
3 court’s judgment in all respects. Because the decision on appeal became final under
4 California Rule of Court 8.264(b)(1) thirty days after its filing, and because no petition for
5 review with the California Supreme Court was thereafter submitted, Western maintains
6 that the state court action now constitutes a final decision on the merits. Western urges
7 this Court to now grant summary judgment on collateral estoppel grounds since it
8 maintains that the last impediment to doing so (a final judgment) has now been realized.

9 In the wake of Western’s status report, this Court lifted its August 22, 2012, stay
10 on these proceedings and directed the parties to submit further briefing on whether
11 Western is now entitled to summary judgment given the final adjudication of the state
12 court action. In so doing, however, the Court explicitly directed the parties to take into
13 account “the fact that the Court has already determined . . . that the issues and parties in
14 both this case and the state action are identical.” Oct. 26, 2015 Minute Order, ECF No.
15 36.

16 Despite that admonition, the overwhelming majority of Plaintiff’s supplemental
17 briefing is devoted to arguments that this case and the state action do not involve
18 identical issues. That question has already been decided and has been resolved
19 against Plaintiff and in favor of applying collateral estoppel. As to the only matter on
20 which briefing was requested—whether or not the state court action was final—Plaintiff
21 concedes that Western “won the judgment creditor action in state court **and that state**
22 **court action is final.**” Pl.’s Supp. Brief, ECF No. 38, 2:5-6 (emphasis added).
23 Nevertheless, Plaintiff goes on to argue that the judgment creditor action and Plaintiff’s
24 attempt to pursue Western as an assignee of Western’s insured are different, and that
25 therefore collateral estoppel should not apply.

26 There is no dispute that the parties are identical for collateral estoppel purposes.
27 As to identity of issues, as indicated above, the Court already conclusively determined
28 that issue against Plaintiff, as both the Court’s October 26, 2016 Minute Order and its

1 previous August 22, 2012, Memorandum and Order make abundantly clear. The
2 Memorandum and Order explains that even though Plaintiff's status "has changed from
3 judgment creditor to assignee of rights, her claims remain essentially identical to those
4 raised in the [state] action, and each of these claims turns on the issue of Western's
5 obligation to defend or indemnify [its insured]." Aug. 22, 2016 Mem., ECF No. 22,
6 2:1:18-2. This Court agreed with the state court that there was no potential for coverage
7 under the circumstances, and that Plaintiff could not establish that Western owed any
8 duty to its insured which could, in turn be assigned to Plaintiff.

9 The Third Appellate District's decision makes this conclusion even more clear.
10 That Court agreed that Western had established that

11 (1)The underlying action was for intangible economic loss
12 and was not based on bodily injury or property damage,
13 because the claims did not meet the CGL insurance policy
14 definitions for "bodily injury," "property damage," or
15 "personal and advertising injury"; (2) even if the claims had
16 met those definitions, they were not caused by any
17 "occurrence," i.e., an "accident," as required for coverage;
18 (3) even if caused by an occurrence, they were excluded
19 from coverage by the policy exclusions for employer liability
and/or contractual liability; (4) the claims did not meet the
professional liability policy definitions for bodily injury,
property damage, or personal injury caused by a professional
incident; and (5) even if they met the professional liability
policy definitions, coverage was excluded for injury to the
insured's employee arising out of an in the course of the
employment or performing duties resolved to the conduct of
the insured's business.

20 See Decision, ECF No. 34, Ex. A, p. 21.

21 Consequently, the Third Appellate District exhaustively ruled out any potential for
22 coverage which could support Plaintiff's claim whether as a judgment creditor or an
23 assignee. The Court also expressly rejected Plaintiff's contention that injury to intangible
24 economic interests like unpaid overtime, wages and benefits can constitute tangible
25 property damage for insurance coverage purposes Id. at 21-22. Finally, contrary to
26 Plaintiff's argument to the contrary, the Third Appellate District further rejected her
27 contention that using gasoline to run errands for her clients constituted a withholding of

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1 tangible property by her employer so as to trigger any potential for coverage. Id. at 23-
2 24.

3 In sum, then, since it is undisputed that the state action has now resulted in a final
4 judgment, and because this Court has already determined that the remaining
5 prerequisites for collateral estoppel have been satisfied, Western is entitled to summary
6 judgment as to the present lawsuit, on collateral estoppel grounds, inasmuch as
7 Plaintiff's claims have already been adjudicated in the state court action. Defendant's
8 Motion for Summary Judgment (ECF No. 8) is accordingly GRANTED and the Clerk of
9 Court is directed to issue judgment in Western's favor and against Plaintiff.

10 IT IS SO ORDERED.

11 Dated: January 4, 2018

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13 MORRISON C. ENGLAND, JR.
14 UNITED STATES DISTRICT JUDGE
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