

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ROSE OGG,

Plaintiff,

No. CIV S-11-0789 KJM DAD PS

v.

CONNECTICUT GENERAL LIFE
POLICY, et al.,

Defendants.

ORDER AND FINDINGS AND
RECOMMENDATIONS

_____ /

This matter was referred to the undersigned in accordance with Local Rule 302(c)(21) and 28 U.S.C. § 636(b)(1). Plaintiff has requested leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915.

Plaintiff has submitted an in forma pauperis application that makes the showing required by 28 U.S.C. § 1915(a)(1). Plaintiff’s request for leave to proceed in forma pauperis will therefore be granted.

The determination that plaintiff may proceed in forma pauperis does not complete the inquiry required by the statutes. Under 28 U.S.C. § 1915(e)(2), the court is required to dismiss an in forma pauperis case at any time if the plaintiff’s allegations of poverty is untrue or if the action is frivolous or malicious, fails to state a claim on which relief may be granted, or seeks monetary relief against an immune defendant. Duplicative or repetitious litigation of

1 virtually identical causes of action is subject to dismissal under 28 U.S.C. § 1915 as malicious.
2 Cato v. United States, 70 F.3d 1103, 1105 n.2 (9th Cir. 1995) (holding that a complaint that
3 “merely repeats pending or previously litigated claims” may be dismissed as frivolous under the
4 authority of then-numbered 28 U.S.C. § 1915(d)); Bailey v. Johnson, 846 F.2d 1019, 1021 (5th
5 Cir. 1988). A suit is duplicative if the “claims, parties, and available relief do not significantly
6 differ between the two actions.” Barapind v. Reno, 72 F. Supp.2d 1132, 1145 (E.D. Cal. 1999)
7 (quoting Ridge Gold Standard Liquors, Inc. v. Joseph E. Seagram & Sons, Inc., 572 F. Supp.
8 1210, 1213 (N.D. Ill. 1983)). This is true even where the new complaint repeats the same claims
9 but against new defendants. Bailey, 846 F.2d at 1021. “Dismissal of the duplicative lawsuit,
10 more so than the issuance of a stay or the enjoinder of proceedings, promotes judicial economy
11 and the ‘comprehensive disposition of litigation.’” Adams v. California, 487 F.3d 684, 692-93,
12 694 (9th Cir. 2007) (citation omitted).

13 On May 19, 2010, plaintiff filed a complaint in this court naming as defendants
14 Cigna Group Insurance Company, Greyhound Lines Inc., Northern America Insurance Company,
15 Northern Trust Company, Connecticut General Life, and Bankers Life Insurance Company.¹ See
16 Ogg v. Cigna Group Insurance Company et. al., 10-cv-1218 KJM GGH. In the complaint filed in
17 that earlier action plaintiff alleged that after her husband passed away she requested life
18 insurance proceeds from his former employer, Greyhound, but was told that his life insurance
19 policies terminated when he retired. See Case No. 10-cv-1218 KJM GGH, Doc. No. 1. Therein,
20 plaintiff also alleged that the named defendants violated their duties to disclose to plaintiff the
21 existence of the insurance policies and to pay benefits to her under those policies. (Id.) Based on
22 those allegations, plaintiff sued the defendants identified above for breach of contract. (Id.) On
23 September 13, 2010, plaintiff’s complaint in her earlier filed action was dismissed with leave to
24 file an amended complaint. See Case No. 10-cv-1218 KJM GGH, Doc. No. 3. However,

25
26 ¹ A court may take judicial notice of court records. See MGIC Indem. Co. v. Weisman,
803 F.2d 500, 505 (9th Cir. 1986); United States v. Wilson, 631 F.2d 118, 119 (9th Cir. 1980).

1 plaintiff did not file an amended complaint. Accordingly, on November 3, 2010, the assigned
2 Magistrate Judge issued findings and recommendations recommending that plaintiff's earlier
3 action be dismissed with prejudice. See Case No. 10-cv-1218 KJM GGH, Doc. No. 4. Those
4 findings and recommendations were adopted by John A. Mendez, U.S. District Judge on January
5 28, 2011, and that action was dismissed with prejudice. See Id., Doc. No. 6.²

6 On March 23, 2011, plaintiff filed the complaint now pending before this court.
7 Therein, plaintiff again names as a defendant Connecticut General Life Policy and also names
8 ESOP Western Greyhound Trust, American Express Life, Employee Welfare Benefit Plan, and
9 Greyhound Amalgamated Trust. (Compl. (Doc. No. 1) at 1.) In her complaint filed in this action
10 plaintiff again alleges that her deceased husband had life insurance policies acquired while
11 employed by Greyhound and that the named defendants violated their duties to disclose to
12 plaintiff the existence of these insurance policies and to pay benefits to her under the terms those
13 policies. (Id. at 2-3.) In this regard, plaintiff has again sued the named defendants for breach of
14 contract.³ (Id.)

15 The undersigned finds no significant difference between the claims or available
16 relief between plaintiff's May 19, 2010 complaint filed in Case. No. 10-cv-1218 KJM GGH and
17 the March 23, 2011 complaint now pending before the court. There is also a substantial
18 similarity between the defendants named in both actions. Accordingly, the court finds that
19 plaintiff's March 23, 2011 complaint is duplicative of the complaint she filed on May 19, 2010 in
20 Case. No. 10-cv-1218 KJM GGH. As noted above, plaintiff's earlier filed action was dismissed

21 ² After filing this new action, on May 6, 2011, plaintiff submitted an untimely amended
22 complaint in Case. No. 10-cv-1218 KJM GGH. On May 11, 2011, the assigned Magistrate Judge
23 issued an order noting that Case. No. 10-cv-1218 KJM GGH was closed on January 28, 2011 and
24 that plaintiff's belated amended complaint would be placed in the file and disregarded. Case No.
10-cv-1218 KJM GGH, Doc. No. 9.

25 ³ Although plaintiff also makes reference to the "Civil Right (sic) Act 28 USC 1343" and
26 to 42 U.S.C. § 1985 in her complaint, it is nonetheless apparent that the true cause of action
being pursued by plaintiff in this action is for "defendants breach of contracts" (Compl.
(Doc. No. 1) at 2.)

1 with prejudice. Thus, plaintiff's claims have already been adjudicated on the merits and plaintiff
2 is barred from bringing a subsequent action alleging the same claims. See Fed. R. Civ. P. 41(b);
3 Owens v. Kaiser Foundation Health Plan, Inc., 244 F.3d 708, 714 (9th Cir. 2001) (dismissal or
4 prior action with prejudice based on plaintiff's failure to prosecute was an adjudication on the
5 merits for res judicata purposes); Johnson v. United States, Dep't of Treasury, 939 F.2d 820, 825
6 (9th Cir. 1991) (noting that dismissal for failure to prosecute is "treated as an adjudication on the
7 'merits' for purposes of preclusion."); see also Dupree v. Jefferson, 666 F.2d 606, 610 n.25 (D.C.
8 Cir. 1981) ("A dismissal with prejudice operates as an adjudication upon the merits, and
9 consequently operates to bar a later action.")

10 Accordingly, IT IS HEREBY ORDERED that plaintiff's March 23, 2011
11 application to proceed in forma pauperis (Doc. No. 2) is granted.

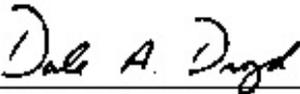
12 IT IS RECOMMENDED that:

- 13 1. Plaintiff's March 23, 2011 complaint (Doc. No. 1) be dismissed with prejudice;
14 and
15 2. This action be dismissed.

16 These findings and recommendations will be submitted to the United States
17 District Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within
18 fourteen (14) days after being served with these findings and recommendations, plaintiff may file
19 written objections with the court. A document containing objections should be titled "Objections
20 to Magistrate Judge's Findings and Recommendations." Plaintiff is advised that failure to file
21 objections within the specified time may, under certain circumstances, waive the right to appeal
22 the District Court's order. See Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

23 DATED: May 16, 2011.

24
25 DAD:6
26 Ddad1\orders.prose\ogg789.ifp.f&rs



DALE A. DROZD
UNITED STATES MAGISTRATE JUDGE