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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

GONZALO R. RUBANG, JR.

Plaintiff

v.

GALLAGHER BASSETT SERVICES,
INC., et al.,

Defendants.

No. 2:18-cv-2350-JAM-KJN PS

ORDER AND

FINDINGS AND RECOMMENDATIONS

Plaintiff Gonzalo Rubang, proceeding without counsel, commenced this action on August 29, 2018, and requested leave to proceed *in forma pauperis*. (ECF Nos. 1, 2, 4.) On September 4, 2018, plaintiff also filed a first amended complaint. (ECF No. 3.) After carefully reviewing plaintiff’s filings, the court recommends that the action be dismissed based on the doctrine of claim preclusion and plaintiff’s motions to proceed *in forma pauperis* in this court be denied as moot.

Liberal construed, plaintiff’s complaint alleges claims of negligence and discrimination against defendant Gallagher Bassett Services, Inc., which appears to be either a worker’s compensation insurance company or a claims management company, and defendant Kathleen Gruber, the adjuster assigned to plaintiff’s claim, for failure to authorize certain medical

1 treatments. However, regardless of any potential merit to plaintiff's claims, the documents
2 attached to plaintiff's complaint show that plaintiff had already filed such claims against the same
3 named defendants in the Solano County Superior Court, and that the state court action was
4 dismissed with prejudice on August 10, 2018. (See ECF No. 3 at 12 ["Judgment of Dismissal
5 After Sustaining of Demurrer to Complaint Without Leave to Amend"].) As such, plaintiff's
6 complaint here is plainly barred by the doctrine of claim preclusion. Owens v. Kaiser Foundation
7 Health Plan, Inc., 244 F.3d 708, 713 (9th Cir. 2001). If plaintiff believes that the state court
8 erroneously dismissed his claims, the proper course of action is to appeal that decision to the state
9 appellate courts, not to file a new action in federal court.

10 Accordingly, IT IS HEREBY RECOMMENDED that:

- 11 1. The action be dismissed based on the doctrine of claim preclusion.
- 12 2. Plaintiff's motions to proceed *in forma pauperis* in this court (ECF Nos. 2, 4) be
13 denied as moot.
- 14 3. The Clerk of Court be directed to close this case.

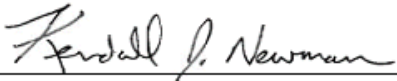
15 In light of those recommendations, IT IS ALSO ORDERED that all pleading, discovery,
16 and motion practice in this action are STAYED pending resolution of the findings and
17 recommendations. With the exception of objections to the findings and recommendations, and
18 non-frivolous motions for emergency relief, the court will not entertain or respond to any motions
19 or filings until the findings and recommendations are resolved.

20 These findings and recommendations are submitted to the United States District Judge
21 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen (14)
22 days after being served with these findings and recommendations, any party may file written
23 objections with the court and serve a copy on all parties. Such a document should be captioned
24 "Objections to Magistrate Judge's Findings and Recommendations." Any reply to the objections
25 shall be served on all parties and filed with the court within fourteen (14) days after service of the
26 objections. The parties are advised that failure to file objections within the specified time may
27 waive the right to appeal the District Court's order. Turner v. Duncan, 158 F.3d 449, 455 (9th
28 Cir. 1998); Martinez v. Ylst, 951 F.2d 1153, 1156-57 (9th Cir. 1991).

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IT IS SO ORDERED AND RECOMMENDED.

Dated: October 1, 2018


KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE