

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 14-cv-03048-GPG

MAGDALINA KALINCHEVA, MD,

Plaintiffs,

v.

JESSE NEUBARTH, and  
OTHER DEFENDANTS,

Defendants.

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ORDER OF DISMISSAL

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Plaintiff Magdalena Kalincheva, MD., resides in Stockton, California. Plaintiff, acting *pro se*, initiated this action by filing a Complaint for Injunctive Relief Restraining Order and Damages, a Notice of Removal of All Cases, Change of Venue and Relief, and multiple other pleadings. In an order entered on November 17, 2014, Magistrate Judge Gordon P. Gallagher directed Plaintiff to cure certain deficiencies if she wished to pursue her claims. Specifically, Magistrate Judge Gallagher directed Plaintiff to file her claims and request to proceed without prepayment of filing fees or costs on proper Court-approved forms.

Magistrate Judge Gallagher also informed Plaintiff this Court is aware she has filed multiple cases in at least nine different federal district courts that address the same issues Plaintiff is attempting to raise in this action in this Court. In particular, Magistrate Judge Gallagher found Plaintiff has filed at least three complaints in the United States District Court for the Eastern District of California that raise the same claims and

includes for the most part the same pleadings that Plaintiff has submitted in this case. See *Kalincheva v. Neubarth*, No. 14-cv-01261-LJO-JLT (E.D. Calif. Oct. 31, 2014). The Eastern District of California dismissed Case No. 14-cv-01261-LJO-JLT as barred by the doctrine of res judicata, because Plaintiff had previously raised the same claims in *Kalincheva v. Neubarth*, No. 13-cv-01601-TLN-DAD (E.D. Calif. Feb. 21, 2014), and *Kalincheva v. Neubarth*, No. 12-cv-02231-JAM-DAD (E.D. Calif. Dec. 13, 2012), and these actions were both dismissed for failure to state a claim, a ruling on the merits.

Magistrate Judge Gallagher told Plaintiff any attempt to raise the same claims in this Court that she has raised in other federal courts, which were dismissed on the merits, is an abuse of the federal judicial system. Plaintiff was warned that this Court does not tolerate such abuse and any attempt by Plaintiff to relitigate issues decided on the merits by other federal district courts will result in the Court imposing filing restrictions against Plaintiff in this Court.

Plaintiff, however, was given the opportunity to cure the above noted deficiencies and to submit claims that are properly raised in this Court, and have not been dismissed on the merits by another federal district court. On December 15, 2014, Plaintiff submitted eight filings, two of which are complaints. The other pleadings are requests for (1) summons; (2) injunctive relief; (3) “to find & import her future husband;” (4) email address; and (5) removal of all cases. Plaintiff also included a proposed order regarding her request for injunctive relief. The complaints name different defendants but involve the same incidents surrounding a breach of contract by and divorce from Defendant Jess Neubarth, which were at issue in Case No. 14-cv-01261-LJO-JLT, and previously decided on the merits in Case Nos. 13-cv-01601-TLN-DAD and 12-cv-02231-

JAM-DAD, in the Eastern District of California.

Because Plaintiff now has submitted a complaint addressing the same claims that she raised in the Eastern District of California, she has failed to comply with Magistrate Judge Gallagher's November 17, 2014 Order, and the action is subject to dismissal. Furthermore, "[r]epetitious litigation of virtually identical causes of action may be dismissed under § 1915 as frivolous or malicious." *McWilliams v. Colorado*, 121 F.3d 573, 574 (10th Cir. 1997) (quotation marks and alteration omitted). To determine whether a pleading repeats pending or previously litigated claims, the Court may consult its own records. See *Duhart v. Carlson*, 469 F.2d 471, 473 (10th Cir. 1972). The Court, having reviewed the Public Access to Court Electronic Records (PACER), and determined that this action is repetitious of Case Nos. 14-cv-01261-LJO-JLT, 13-cv-01601-TLN-DAD, and 12-cv-02231-JAM-DAD, will dismiss this action as both frivolous and malicious. The Court will entertain filing restrictions against Plaintiff if she files any further actions in this Court that are repetitious or improper.

The Court also certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal from this Order is not taken in good faith, and, therefore, *in forma pauperis* status will be denied for the purpose of appeal. See *Coppedge v. United States*, 369 U.S. 438 (1962). If Plaintiff files a notice of appeal she must pay the full \$505 appellate filing fee or file a motion to proceed *in forma pauperis* in the United States Court of Appeals for the Tenth Circuit within thirty days in accordance with Fed. R. App. P. 24.

Accordingly, it is

ORDERED that the Complaint and action are dismissed with prejudice as legally frivolous pursuant to 28 U.S.C. § 1915(e)(2)(B)(i). It is

FURTHER ORDERED that leave to proceed *in forma pauperis* on appeal is denied. It is

FURTHER ORDERED that all pending motions are denied as moot.

DATED at Denver, Colorado, this 30<sup>th</sup> day of December, 2014.

BY THE COURT:

s/Lewis T. Babcock  
LEWIS T. BABCOCK, Senior Judge  
United States District Court