

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

ERIN CANNING,

Plaintiff,

-v-

1:15-CV-0493
(DNH/RFT)
(Lead Case)

BRUNO HOFMANN and BONNIE HOFMANN,

Defendants.

ERIN CANNING,

Plaintiff,

-v-

1:15-CV-0895
(DNH/RFT)
(Member Case)

JOHN CANNING and JUDY CANNING,

Defendants.

APPEARANCES:¹

OF COUNSEL:

ERIN CANNING
Plaintiff, *Pro se*
P.O. Box 284
Saratoga Springs, NY 12866

HODGSON, RUSS LAW FIRM
Attorneys for Defendants Bruno & Bonnie Hofmann
140 Pearl Street, Suite 100
Buffalo, NY 14202

JEFFREY T. FIUT, ESQ.
MICHELLE L. MEROLA, ESQ.

DAVID N. HURD
United States District Judge

¹ Defendants John and Judy Canning have not yet been served in this matter and, therefore, have not appeared.

DECISION and ORDER

Pro se plaintiff Erin Canning brought an action against defendants Bruno and Bonnie Hofmann in case number 1:15-CV-0493 seeking relief pursuant to five separate federal statutes (the “Lead Case Complaint”). On May 29, 2015, defendants in the Lead Case filed a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6). See ECF No. 12. On July 22, 2015, plaintiff filed a separate action against John and Judy Canning in case number 1:15-CV-0895 (the “Member Case Complaint”). On September 16, 2015, the Honorable Randolph F. Treece, United States Magistrate Judge, advised by Report-Recommendation that: (i) defendants’ motion to dismiss the Lead Case Complaint be granted and (ii) plaintiff’s member case complaint be dismissed for failure to state a claim pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii). While plaintiff did not submit objections to the Report-Recommendation, on September 21, 2015, she filed a 112 page document entitled “Evidence Documents Enclosed and Update”, which has been reviewed and considered for the purposes of this Decision & Order. See ECF No. 37.

Based upon a *de novo* review of the portions of the Report-Recommendation to which plaintiff objected, the Report-Recommendation is accepted in whole. See 28 U.S.C. § 636(b)(1).

Therefore, it is ORDERED that:

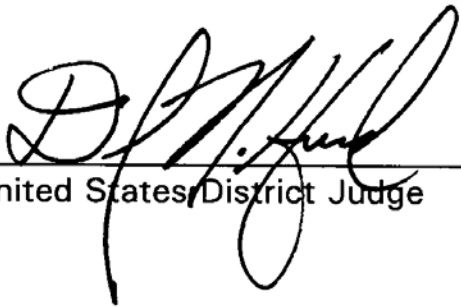
1. Defendants’ Motion to Dismiss the Lead Case Complaint (ECF No. 12) is **GRANTED**; and
2. Plaintiff’s Member Case Complaint is **DISMISSED** without leave to amend for failure to state a claim pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii) and for lack of subject matter jurisdiction; and

3. The consolidated action is hereby closed without consideration of plaintiff's pending motion for injunctive relief (ECF No. 34), motion to expedite relief (ECF No. 39), motion to serve court marshal papers (ECF No. 40) and motion for bill payment (ECF No. 41), as such motions are moot and unnecessary; and it is further ordered that

4. The Clerk serve a copy of this Decision and Order upon plaintiff in accordance with the Local Rules.

The Clerk of the Court shall enter judgment and close this case.

IT IS SO ORDERED.



United States District Judge

Dated: November 2, 2015
Utica, New York