

FILED

UNITED STATES COURT OF APPEALS

MAR 14 2017

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

KITTI RUTH PAYNE, AKA Kitti Ruth
Power,

Plaintiff-Appellant,

v.

PUBLISHERS CLEARING HOUSE,
INC.; et al.,

Defendants-Appellees.

No. 16-16478

D.C. No.

1:16-cv-00165-DAD-SKO
Eastern District of California,
Fresno

ORDER

Before: M. SMITH, CHRISTEN, and OWENS, Circuit Judges.

Upon a review of the record, the response to the order to show cause, and the opening brief received on September 23, 2016, we conclude this appeal is frivolous. We therefore deny appellant's motion to proceed in forma pauperis (Docket Entry No. 4), *see* 28 U.S.C. § 1915(a), and dismiss this appeal as frivolous, pursuant to 28 U.S.C. § 1915(e)(2) (court shall dismiss case at any time, if court determines it is frivolous or malicious).

DISMISSED.

ELF/MOATT

APPENDIX E

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8 UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA
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11 KITTI RUTH PAYNE aka KITTI RUTH
12 POWER,

13 Plaintiff,

14 v.

15 PUBLISHERS CLEARING HOUSE, INC.
16 et al.,

17 Defendants.
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No. 1:16-cv-00165-DAD-SKO

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS THAT PLAINTIFF'S
COMPLAINT BE DISMISSED WITH
PREJUDICE AND WITHOUT LEAVE TO
AMEND

(Doc. No. 5)

ORDER DENYING ALL OTHER MOTIONS
AS MOOT

(Doc. Nos. 2, 4, 6, 7)

22 On September 25, 2015, plaintiff Kitti Ruth Payne, proceeding *pro se* and *in forma*
23 *pauperis*, filed an action against defendant Publishers Clearing House, Inc. in this court. *See*
24 *Payne v. Publishers Clearing House*, No. 1:15-cv-01453-AWI-SKO ("*PCH I*"). On December
25 17, 2015, the assigned magistrate judge in *PCH I* recommended that the case be dismissed
26 without leave to amend, for failure to recite a plain and concise statement of allegations under
27 Rule 8 of the Federal Rules of Civil Procedure. *PCH I*, Doc. No. 13. On January 22, 2016, the
28 assigned district judge adopted those findings and recommendation in full and dismissed *PCH I*

1 with prejudice and without leave to amend. *PCHI*, Doc. No. 14. Judgment was entered on
2 January 22, 2016. *PCHI*, Doc. No. 15.

3 On February 4, 2016, plaintiff Payne, proceeding *pro se*, commenced the instant action
4 against defendant Publishers Clearing House, Inc. before this court ("*PCH II*"). (Doc. No. 1.)
5 Shortly thereafter, plaintiff filed a motion to proceed in forma pauperis, as well as a motion
6 directing service by the U.S. Marshals Service. (Doc. Nos. 2, 4.) On March 7, 2016, the assigned
7 magistrate judge issued findings that plaintiff's complaint was barred by the doctrine of res
8 judicata and recommended that plaintiff's complaint be dismissed with prejudice and without
9 leave to amend. (Doc. No. 5.) On March 23, 2016, plaintiff timely filed objections to the
10 magistrate judge's findings and recommendations. (Doc. No. 8.)

11 In the intervening period of time, plaintiff filed two additional motions. On March 10,
12 2016, plaintiff filed a request "to vacate a judgment already entered." (Doc. No. 6.) On March
13 11, 2016, plaintiff filed a motion "to preserve plaintiff's title, possession, and entitlement to
14 compensation by court order." (Doc. No. 7.)

15 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(c), this court has conducted a
16 *de novo* review of this case. Having carefully reviewed the entire file, the court finds the findings
17 and recommendations to be supported by the record and proper analysis.

18 Accordingly,

- 19 1. The March 7, 2016 findings and recommendations (Doc. No. 5) are adopted in full;
- 20 2. The complaint (Doc. No. 1) is dismissed with prejudice and without leave to amend;
- 21 3. Plaintiff's remaining motions (Doc. Nos. 2, 4, 6, 7) are denied as having been rendered
22 moot by this order; and
- 23 4. The Clerk of Court is directed to close this case.

24 IT IS SO ORDERED.

25 Dated: August 13, 2016


UNITED STATES DISTRICT JUDGE

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

KITTI RUTH PAYNE a/k/a KITTI
RUTH POWER,

Plaintiff,

v.

PUBLISHERS CLEARING HOUSE,
INC., d/b/a PCH LOTTO a/k/a
PUBLISHERS CLEARING HOUSE
a/k/a PCH a/k/a THE CLEARING
HOUSE,

Defendants.

1:15-cv-01453-AWI-SKO

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS THAT
PLAINTIFF'S AMENDED
COMPLAINT BE DISMISSED WITH
PREJUDICE AND WITHOUT LEAVE
TO AMEND

(Doc. 12)

Kitti Ruth Payne ("Plaintiff") has filed an action against Publishers Clearing House, Inc. ("Defendant"), alleging in sum that an unknown third-party purporting to be Defendant sent her an e-mail that falsely informed her that she had won a Publishers Clearing House drawing. Doc. 6. Plaintiff provided some personal information to the unknown third party at the email address "office@mail.com" in an effort to claim a prize. *Id.* On November 23, 2015, the Magistrate Judge issued a findings and recommendations, explaining that Plaintiff had not articulated any claim against Defendant. Doc. 12 at 6. The Magistrate Judge further explained that, assuming the truth of Plaintiff's allegations, it was the unknown third-party falsely claiming to be Publishers Clearing House that is responsible for any harm to Plaintiff; Plaintiff has pled no facts to indicate that Defendant was at all involved in the false communications. Doc. 12 at 6-8.

1 On December 17, 2015, Plaintiff filed objections to the findings and recommendations.
2 Plaintiff's objections simply reiterate allegations in the operative complaint. They do not impact
3 the analysis.

4 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), this Court has conducted
5 a de novo review of the case. Having carefully reviewed the entire file, including Petitioner's
6 objections, the Court concludes that the findings and recommendations is supported by the
7 record and proper analysis. No modification to the findings and recommendations is required.

8 Based on the foregoing, IT IS HEREBY ORDERED that Plaintiff's complaint is
9 DISMISSED with prejudice and without leave to amend.

10 This order closes the case.

11
12 IT IS SO ORDERED.

13 Dated: January 21, 2016



SENIOR DISTRICT JUDGE