

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

GONZALO R. RUBANG, JR.,

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

Plaintiff,

V.

GALLAGHER BASSETT SERVICES,
INC., et al.,

ORDER

Defendants.

On April 30, 2019, the magistrate judge filed findings and recommendations dismissing this action with prejudice for lack of subject matter jurisdiction, as recommended by the Ninth Circuit. (ECF Nos. 16, 18). The findings and recommendations were served on the parties and contained notice that any objections to the findings and recommendations were to be filed within fourteen (14) days. On May 10, Plaintiff filed objections to the findings and recommendations (ECF No. 19), which have been considered by the court.

This court reviews de novo those portions of the proposed findings of fact to which an objection has been made. 28 U.S.C. § 636(b)(1); McDonnell Douglas Corp. v. Commodore Business Machines, 656 F.2d 1309, 1313 (9th Cir. 1981); see also Dawson v. Marshall, 561 F.3d 930, 932 (9th Cir. 2009). As to any portion of the proposed findings of fact to which no objection has been made, the court assumes its correctness and decides the matter on the applicable law.

APPENDIX B

1 See Orand v. United States, 602 F.2d 207, 208 (9th Cir. 1979). The magistrate judge's
2 conclusions of law are reviewed de novo. See Britt v. Simi Valley Unified School Dist., 708 F.2d
3 452, 454 (9th Cir. 1983).

4 The court has reviewed the applicable legal standards and, good cause appearing,
5 concludes that it is appropriate to adopt the findings and recommendations in full. Accordingly,
6 IT IS HEREBY ORDERED that:

- 7 1. The findings and recommendations (ECF No. 18) are ADOPTED;
- 8 2. The action is DISMISSED for lack of subject matter jurisdiction;
- 9 3. Plaintiff's motions to proceed in forma pauperis in this court (ECF Nos. 2, 4) are
10 denied as moot; and
- 11 4. The Clerk of Court is directed to close this case.

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13 Dated: July 10, 2019

14 /s/ John A. Mendez

15 JOHN A. MENDEZ

16 United States District Court Judge

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Services, Inc. et al Order Adopting Findings and Recommendations. Content-Type: text/html

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U.S. District Court

Eastern District of California – Live System

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Case Number: 2:18-cv-02350-JAM-KJN

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Document Number: 20

Docket Text:

ORDER signed by District Judge John A. Mendez on 7/10/2019 ADOPTING [18] Findings and Recommendations, DISMISSING the action for lack of subject matter jurisdiction, and DENYING as MOOT [2] and [4] Motions to Proceed IFP. CASE CLOSED. (Huang, H)

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--Case Participants: District Judge John A. Mendez (caed_cmecl_jam@caed.uscourts.gov), Magistrate Judge Kendall J. Newman (caed_cmecl_kjn@caed.uscourts.gov)

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Eastern District of California – Live System

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Case Name: (PS) RuBang v. Gallagher Bassett Services, Inc. et al

Case Number: 2:18-cv-02350-JAM-KJN

Filer:

WARNING: CASE CLOSED on 07/11/2019

Document Number: 21

Docket Text:

JUDGMENT dated ***7/11/2019*** pursuant to order signed by District Judge John A. Mendez on 7/10/2019. (Huang, H)

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JUDGMENT IN A CIVIL CASE

GONZALO R. RUBANG JR.,

v.

CASE NO: 2:18-CV-02350-JAM-KJN

GALLAGHER BASSETT SERVICES, INC.,
ET AL.,

XX -- Decision by the Court. This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED

THAT JUDGMENT IS HEREBY ENTERED IN ACCORDANCE WITH THE
COURT'S ORDER FILED ON 7/11/2019

Marianne Matherly
Clerk of Court

ENTERED: July 11, 2019

by: /s/ H. Huang

Deputy Clerk

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

GONZALO R. RUBANG, JR.

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

Plaintiff

ORDER AND

GALLAGHER BASSETT SERVICES,
INC., et al.,

FINDINGS AND RECOMMENDATIONS

Defendants.

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.

Liberally 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

APPENDIX B

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.

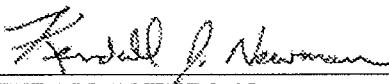
10 Accordingly, IT IS HEREBY RECOMMENDED that:

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).

1 IT IS SO ORDERED AND RECOMMENDED.
2 Dated: October 1, 2018

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4 KENDALL J. NEWMAN
5 UNITED STATES MAGISTRATE JUDGE
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Case Name: (PS) RuBang v. Gallagher Bassett Services, Inc. et al

Case Number: 2:18-cv-02350-JAM-KJN

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ORDER AND FINDINGS and RECOMMENDATIONS signed by Magistrate Judge Kendall J. Newman on 10/1/18 RECOMMENDING that the Action [3] [1] be dismissed on the doctrine of claim preclusion; Motions to proceed in forma pauperis [4] [2] be denied as moot; The Clerk of the Court be directed to close this case. IT IS ALSO ORDERED that all pleading, discovery, and motion practice in this action are STAYED pending resolution of the findings and recommendations. These Findings and Recommendations are submitted to U.S. District Judge John A. Mendez; Objections to these F&R due within fourteen days. (Mena-Sanchez, L)

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UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

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U.S. COURT OF APPEALS

GONZALO R. RUBANG, Jr.,

Plaintiff-Appellant,

v.

GALLAGHER BASSETT SERVICES,
INC.; KATHLEEN GRUBER,

Defendants-Appellees.

No. 18-17263

D.C. No. 2:18-cv-02350-JAM-KJN
Eastern District of California,
Sacramento

ORDER

Before: McKEOWN, BYBEE, and OWENS, Circuit Judges.

We treat Rubang's response to this court's April 18, 2019 order (Docket Entry No. 11) as a motion for reconsideration, and deny the motion.

No further filings will be entertained in this closed case.

APPENDIX A