

Filed 1/13/20

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

COURT OF APPEAL - SECOND DIST.

DIVISION FIVE

FILED

Jan 13, 2020

DANIEL P. POTTER, Clerk

kdominguez Deputy Clerk

MARGARET MORRIS-
CALDERON,

B290811

Plaintiff and Appellant,

(Los Angeles County
Super. Ct. No. BC684574)

v.

THE JAMES RANDI
EDUCATIONAL
FOUNDATION,

Defendant and Respondent.

APPEAL from a judgment of the Superior Court of Los Angeles County, Michael P. Linfield, Judge. Affirmed.

Margaret Morris-Calderon, self-represented, for Plaintiff and Appellant.

Lewis Brisbois Bisgaard & Smith, Jonathan D. Martin and John L. Barber, for Defendant and Respondent.

(37)

Appendix(A)

I. INTRODUCTION

Plaintiff and appellant Margaret Morris-Calderon brought an action against defendant and respondent The James Randi Educational Foundation¹ for fraud and breach of contract alleging defendant's failure to make good on its offer to pay \$1 million to any person who could prove the existence of paranormal activity. The trial court sustained without leave to amend defendant's demurrer to plaintiff's complaint and plaintiff appeals. Because plaintiff's briefs on appeal do not present a comprehensible argument, we affirm.

II. BACKGROUND

"Until 2015, [defendant] sponsored a program called 'One Million Dollar Paranormal Challenge' . . . that offered to pay \$1 Million to 'anyone who could demonstrate a supernatural or paranormal ability under agreed-upon scientific testing criteria.'" On November 16, 2015, plaintiff filed a complaint (Case No. BC601443) against defendant in the Superior Court of Los Angeles County alleging that she made available to defendant records of a four-year history of phone calls she received from her deceased mother from her deceased mother's disconnected phone line, but defendant failed to pay her \$1 million. Plaintiff asserted fraud and breach of contract causes of action against defendant.

¹ Plaintiff's complaint also named as defendants James Randi, defendant's founder, and Stefan H. Black, defendant's former registered agent for service of process. Randi and Black are not parties to this appeal.

On March 18, 2016, plaintiff filed a first amended complaint naming only Randi and Black as defendants and adding a claim under Public Contract Code section 10285.1. Randi removed plaintiff's action to the United States District Court, Central District of California. Black consented to removal.

Randi and Black then moved to dismiss plaintiff's federal court action. On February 14, 2017, the district court ruled that plaintiff's first amended complaint failed to present allegations sufficient to establish the elements required for fraud, breach of contract, and a violation of Public Contract Code section 10285.1. It granted plaintiff leave to amend the fraud and breach of contract causes of action, finding it was not "absolutely clear that the deficiencies of the complaint could not be cured by amendment." *Weilburg v. Shapiro*, 488 F.3d 1202, 1205 (9th Cir. 2007)." It dismissed with prejudice the cause of action under the Public Contract Code, finding a complete absence of alleged facts that would support a Public Contract Code claim. Finally, the district court granted plaintiff leave to amend to add defendant as a defendant, finding that the allegations in the first amended complaint indicated plaintiff's apparent intent to sue defendant. The district court ordered any amended complaint to be filed on or before February 28, 2017.

On March 30, 2017, pursuant to its prior orders, the district court issued a judgment dismissing plaintiff's action with prejudice. On November 15, 2017, the United States Court of Appeals for the Ninth Circuit dismissed as frivolous plaintiff's apparent appeal from the district court's judgment. The United States Supreme Court denied plaintiff's apparent petition for writ of certiorari concerning that dismissal.

On April 10, 2017, plaintiff filed a civil rights action in federal court against defendant, Randi, and Black under 42 U.S.C. section 1983. The complaint concerned defendant's \$1 million challenge, plaintiff's presentation of evidence of life after death and paranormal activity, and, presumably, defendant's failure to pay plaintiff the prize money.

On May 2, 2017, a magistrate judge recommended that the district court deny plaintiff's request to proceed in forma pauperis. It stated, "The proposed Complaint, which is largely incomprehensible, violates Rule 8(a) of the Federal Rules of Civil Procedure. See Fed. R. Civ. P. 8(a) (complaint must contain a 'short and plain statement of the claim showing that the pleader is entitled to relief'); see also McHenry v. Renne, 84 F.3d 1172, 1178 (9th Cir. 1996) (complaint is subject to dismissal for failure to state a claim if 'one cannot determine from the complaint who is being sued, for what relief, and on what theory').

"To the extent the proposed Complaint repeats allegations Plaintiff made in Morrison-Calderon v. Randy, CV 16-4270-JAK(RAOx), an action previously dismissed with prejudice, the principles of res judicata and claim preclusion would render the present Complaint frivolous. See generally Cusano v. Klein, 264 F.3d 936, 948 (9th Cir. 2001); Owens v. Kaiser Foundation Health Plan, Inc., 244 F.3d 708, 713 (9th Cir. 2001).

"Plaintiff has utilized a form complaint designed for actions brought pursuant to 42 U.S.C. section 1983. However, there exists no subject matter jurisdiction under 42 U.S.C. section 1983 because Defendants did not act under color of state law. See Price v. State of Hawaii, 939 F.2d 702, 707-08 (9th Cir. 1991), cert. denied, 503 U.S. 938 (1992) ('private parties are not generally acting under color of state law')."

On May 4, 2017, the district court denied plaintiff's request to proceed in forma pauperis. It ordered plaintiff to pay the filing fees in full within 30 days or her case would be dismissed.

On June 6, 2017, plaintiff filed a notice of appeal from the district court's May 4, 2017, order. On August 16, 2017, the court of appeals dismissed the appeal because plaintiff had not filed her notice of appeal within 30 days of the district court's May 4, 2017, order.

On November 27, 2017, plaintiff returned to state court and filed the complaint (Case No. BC684574) that is the subject of this appeal. In her complaint, plaintiff asserted fraud and breach of contract causes of action again alleging she was entitled to defendant's \$1 million prize based on evidence she made available to defendant about her telephone communications with her deceased mother.

On March 22, 2018, defendant demurred to plaintiff's complaint asserting that plaintiff twice previously filed the exact same lawsuit against it—the November 16, 2015, action that was removed to federal court and the April 10, 2017, federal court civil rights action—and both prior lawsuits were dismissed. Accordingly, defendant argued, plaintiff's complaint was barred by the doctrine of res judicata.

On May 7, 2018, plaintiff filed a request for entry of default and court judgment. On May 17, 2018, the court clerk rejected plaintiff's request for entry of default and default judgment in part because defendant had already filed its demurrer.

On June 1, 2018, the trial court sustained defendant's demurrer without leave to amend. In its ruling, the trial court stated, "This Court has spent countless hours attempting to decipher the lengthy, handwritten documents that Plaintiff has

filed. The hand-written opposition to this [demurrer], like most of the documents that plaintiff has filed in this matter, veers between the confusing and the incomprehensible.”

The trial court then set forth elements for applying the doctrine of res judicata to a cause of action or an issue adjudicated in a prior action² and set forth the factual and procedural backgrounds of plaintiff’s prior actions. It stated that “[p]roviding access to justice for self-represented litigants is a priority for California courts.” (California Rules of Court, rule 10.960, subdivision (b).) [¶] Nonetheless, it would not advance the cause of justice to continue this charade. Plaintiff’s complaint has been dismissed twice. The Court recognizes that Plaintiff . . . feels that she has incontrovertible proof that her deceased mother has been in touch with her from beyond the grave, and that justice will not be done until defendant . . . pays her \$1 million based on her proof of the paranormal. Everyone is entitled to her day in court. However, no matter how much she feels aggrieved, plaintiff cannot continue to file the same case over and over again. Her case against [defendant] has been dismissed twice before. Plaintiff does not get three bites at the apple. If res judicata is to mean anything, this demurrer must be sustained.”

As an alternative ground, the trial court stated that even if res judicata did not bar plaintiff’s third complaint it would dismiss the complaint on its own motion. The allegations in

² The doctrine of res judicata applies when: ““(1) A claim or issue raised in the present action is identical to a claim or issue litigated in a prior proceeding; (2) the prior proceeding resulted in a final judgment on the merits; and (3) the party against whom the doctrine is being asserted was a party or in privity with a party to the prior proceeding. [Citations.]” [Citation.]” (*Boeken v. Philip Morris USA, Inc.* (2010) 48 Cal.4th 788, 797.)

plaintiff's third complaint, the trial court found, were "simply non-justiciable." Among other things, the trial court stated that "in order for plaintiff to prevail in this action, she would have to prove that it is more likely than not that there is life after death. [¶] . . . [¶] The Courts are not qualified to determine if there is a God or if there is life-after-death. But that latter determination is a necessary predicate to plaintiff prevailing in this action." The trial court entered judgment in defendant's favor.

III. DISCUSSION

In her form notice of appeal, plaintiff checked the boxes indicating that she was appealing from a default judgment—plaintiff apparently intended to appeal from the trial court's failure to enter a default judgment—and a judgment of dismissal after an order sustaining a demurrer. Plaintiff's briefs fail to make a comprehensible argument that the trial court erred either with respect to its failure to enter a default judgment or in entering the judgment following its order sustaining defendant's demurrer.

"We are not bound to develop appellants' arguments for them. [Citation.] The absence of cogent legal argument or citation to authority allows this court to treat the contentions as waived. (*Interinsurance Exchange v. Collins* (1994) 30 Cal.App.4th 1445, 1448 . . .; see also Cal. Rules of Court, rule 8.204(a)(1)(B) [each point in a brief must be supported by 'argument and, if possible, by citation of authority'].)" (*In re Marriage of Falcone & Fyke* (2008) 164 Cal.App.4th 814, 830; *Niko v. Foreman* (2006) 144 Cal.App.4th 344, 368 ["One cannot simply say the court erred, and leave it up to the appellate court

to figure out why”]; *Badie v. Bank of America* (1998) 67 Cal.App.4th 779, 784–785 [“When an appellant fails to raise a point, or asserts it but fails to support it with reasoned argument and citations to authority, we treat the point as waived”]; *Berger v. Godden* (1985) 163 Cal.App.3d 1113, 1117 [deeming “the failure of appellant to advance any pertinent or intelligible legal argument . . . to constitute an abandonment of the appeal”].)

Neither plaintiff’s “argument” concerning res judicata nor her “argument” concerning default is comprehensible. Thus, plaintiff has forfeited her challenges to the trial court’s rulings.³ (*In re Marriage of Falcone & Fyke, supra*, 164 Cal.App.4th at p. 830; *Niko v. Foreman, supra*, 144 Cal.App.4th at p. 368; *Badie v. Bank of America, supra*, 67 Cal.App.4th at pp. 784–785; *Berger v. Godden, supra*, 163 Cal.App.3d at p. 1117.)

³ As to plaintiff’s default challenge, we note that defendant filed its demurrer (March 12, 2018) prior to plaintiff filing her request for entry of default and judgment (May 7, 2018). A defendant who files a belated pleading at a time when a default has not yet been taken is not strictly in default and an untimely filed pleading serves to preclude the taking of a default unless the pleading has been stricken. (*Goddard v. Pollock* (1974) 37 Cal.App.3d 137, 141; see Code Civ. Proc., § 585.)

IV. DISPOSITION

The judgment is affirmed. Defendant is entitled to recover its costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

KIM, J.

We concur:

BAKER, Acting P. J.

MOOR, J.

(45)

JUN 01 2018

Sherri B. Carter, Executive Officer/Clerk
By Reyna Navarro, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES, CENTRAL DISTRICT

MARGARET MORRIS-CALDERON,

Plaintiff,

v.

JAMES RANDI EDUCATIONAL
FOUNDATION,

Defendant.

CASE NO. BC 684574

~~PROPOSED~~ ORDER SUSTAINING
DEFENDANT'S DEMURRER WITHOUT
LEAVE TO AMEND, AND DECLARING
PLAINTIFF A VEXATIOUS LITIGANT

Date: May 2, 2018
Time: 8:30 a.m.
Dept: 34

RESERVATION NO.: 180321299835

Action Filed: November 27, 2017
Trial Date: None Set

The demurrer is SUSTAINED WITHOUT LEAVE TO AMEND.

Defendant's request to have Plaintiff declared a vexatious litigant is DENIED.

Defendant's Request for Judicial Notice is GRANTED. (See Evid. Code § 452, subd. (d).)

INTRODUCTION:

"The One Million Dollar Paranormal Challenge was an offer by the James Randi Educational Foundation (JREF) to pay out one million U.S. dollars to anyone who can demonstrate a supernatural or paranormal ability under agreed-upon scientific testing criteria. Over a thousand people applied to take it, but none were successful." (Wikipedia, available at https://en.wikipedia.org/wiki/One_Million_Dollar_Paranormal_Challenge).

Plaintiff Morris-Calderon has sued the James Randi Educational Fund for the \$1 million that she believes she is owed under the terms of the Paranormal Challenge.

46

~~PROPOSED~~ ORDER

Appendix(B)

1 Plaintiff believes she has incontrovertible proof that her mother – who died six years ago –
2 has been communicating to her from beyond-the-grave. She alleges that she has phone records to
3 prove this claim.

4 For the reasons indicated below, the Court sustains defendant's demurrer without leave to
5 amend.

6 **PRELIMINARY COMMENTS:**

7 Defendant served and filed the instant demurrer on 03/22/18. On 04/05/18, plaintiff filed a
8 "Notice of Objection's of Defendant's Motion's an Request's Demurrer and Orders of Declaring
9 Plaintiff to be Vexatious Litigant." [Spelling and grammar in original.] There is no proof of
10 service or other indication that this document was ever served on defendant. On 04/23/18,
11 defendant filed a "Notice of Non-Opposition to Demurrer" indicating that based on the hearing
12 date for this demurrer, "JREF's counsel had to receive [plaintiff's opposition] papers by the close
13 of business on April 20, 2018. They did not." (See Notice of Non-Opposition of 04/23/18.)

14 On 5/2/2018, Plaintiff submitted a document to the Court which shows that a package was
15 mailed to defense counsel on April 17, 2018. According to the letter submitted by Plaintiff, that
16 document was her opposition.

17 This Court has spent countless hours attempting to decipher the lengthy, handwritten
18 documents that Plaintiff has filed. The hand-written opposition to this motion, like most of the
19 documents that plaintiff has filed in this matter, veers between the confusing and the
20 incomprehensible. (Cf. *Sekiya v. Gates* (9th Cir. 2007) 508 F.3d 1198, 1200 quoting *N/S Corp. v.*
21 *Liberty Mut. Ins. Co.* (9th Cir, 1997) 127 F.3d 1145, 1146 ["In order to give fair consideration to
22 those who call upon us for justice, we must insist that parties not clog the system by presenting us
23 with a slubby mass of words rather than a true brief. Hence we have briefing rules."]))

24 Nonetheless, the Court recognizes that plaintiff is representing herself in pro per. Whether
25 or not the opposition was correctly served on defendant, the Court has read and considered the
26 opposition.

27
28 4846-1279-7285.1

47

1 BACKGROUND:

2 Plaintiff commenced this action on 11/27/17 against defendant for: (1) breach of contract;
3 and (2) fraud. Plaintiff alleges that defendant made a public offer through its website to pay \$1
4 million to anyone who could offer proof of paranormal activity. She claims that: she has proof
5 that she has been in repeated contact with her dead mother; that she has repeatedly attempted to
6 provide defendant with such proof; but despite this proof, defendant has refused to pay her the \$1
7 million. She also alleges that defendant has discontinued its offer in response to the proof that she
8 has submitted.

9 ANALYSIS:

10 Defendant demurs to the complaint on the ground that each cause of action fails to state
11 facts sufficient to maintain a cause of action. (See Demurrer, p. 1:26-2:3.) Defendant also requests
12 that the Court declare plaintiff a vexatious litigant for bringing the present lawsuit despite the fact
13 that courts have previously dismissed her identical claims on two prior occasions. (See Notice of
14 Motion, p. 2:9-11.)

15 Defendant argues that plaintiff's claim is barred by res judicata because she has "now re-
16 filed the exact same lawsuit against the exact same defendant . . . that was already decided against
17 her and dismissed twice." (Demurrer, p. 1:23-28.)

18 A. Relevant Law

19 A demurrer is proper when the facts alleged in the complaint or matters judicially establish
20 that the plaintiff is seeking relief from the same defendant on the same cause of action as in a prior
21 action, or is asserting an issue decided against the plaintiff in the prior action. (*Boeken v. Philip*
22 *Morris USA, Inc.* (2010) 48 Cal.4th 788, 792-793.) "The doctrine of res judicata gives certain
23 conclusive effect to a former judgment in subsequent litigation involving the same controversy."
24 (*Id.* at p. 797 [internal citations and quotations omitted].)

25 To apply the doctrine of *res judicata* to an entire cause of action or to one or more issues,
26 three factors must be present: (1) a claim or issue raised in the present action is identical to a claim
27 or issue litigated in a prior proceeding; (2) the prior proceeding resulted in a final judgment on the

28 4846-1279-7285.1

48

3

IN RE: ORDER

(B)

1 merits; and (3) the party against whom the doctrine is being asserted was a party or in privity with
2 a party to the prior proceeding. (*Boeken v. Philip Morris USA, Inc.* (2010) 48 Cal.4th 788, 797.) In
3 determining whether two actions have the same claims or issues, courts look to the harm suffered
4 and not to the particular theory asserted. (*Id.* at p. 798 [“cause of action is the right to obtain
5 redress for a harm suffered, regardless of the specific remedy sought or the legal theory (common
6 law or statutory) advanced”].) “[T]he judgment or order is, in respect to the matter directly
7 adjudged, conclusive between the parties and their successors in interest by title subsequent to the
8 commencement of the action or special proceeding, litigating for the same thing under the same
9 title and in the same capacity, provided they have notice, actual or constructive, of the pendency of
10 the action or proceeding.” (Code Civ. Proc., § 1908(a)(2).)

11 “[C]laim preclusion bars ‘not only issues that were actually litigated but also issues that
12 could have been litigated.’ [Citation.]” (*Planning and Conservation League v. Castaic Lake Water
13 Agency* (2009) 180 Cal.App.4th 210, 226.)

14 “A dismissal *with* prejudice bars any later lawsuit on the *same claim*. A judgment of
15 dismissal entered thereon is a final judgment *on the merits*, entitled to res judicata effect.”
16 (Edmon & Karnow, *Civ. Proc. Before Trial* (The Rutter Group 2017) ¶ 11:35.3 [italics in
17 original].) A final judgment on the merits in a prior federal court proceeding provides an adequate
18 basis for imposition of the doctrine of res judicata in a state court proceeding. (See Code Civ.
19 Proc. § 1908(a).)

20 B. Discussion

21 Defendant submits court records indicating that plaintiff has brought identical claims
22 against defendant on two prior occasions. (See generally, RJN.)

23 On 11/16/15, plaintiff commenced an action in Los Angeles Superior Court (Case No.
24 BC601443) against defendant James Randi. (See RJN, Exh. A.) That complaint alleged causes of
25 action for breach of contract and fraud based on plaintiff’s claims that she had submitted evidence
26 of paranormal activity and that defendant had refused to pay her \$1 million as it had promised on
27 its website. (See *Id.*) Defendant subsequently removed the case to federal court and, on 02/14/17,

28 4846-1279-7285.1

(49)

1 the district court granted a motion to dismiss "without prejudice to the filing of a further amended
2 complaint in which proper defendants are named, claims are supported by sufficient factual
3 allegations, and the alleged basis for in personal jurisdiction is provided." (See RJN, Exh. B, Exh,
4 C, p. 14.)

5 This Court agrees with the analysis of the district court, and will quote extensively from its
6 decision:

7 "The caption of the Complaint identified the defendant as JREF. Id. at 4. The first
8 paragraph alleged causes of action against defendant James Randi. Id. The third paragraph
9 alleged that the defendant was a public entity, which it identified as the Web page
10 web.randi.org. Id. The seventh paragraph stated that the defendant "is a corporation or
11 unincorporated association." Id. at 5. As noted, the Complaint stated claims for relief,
including breach of contract, fraudulent inducement, intentional or negligent
misrepresentation, fraudulent concealment, and promissory fraud. Id. at 5, 10-11. It also
appeared to state a claim arising under "Code Civil (§) 425.12," but there is no such
provision of the California Civil Code. Id. at 5.

12 "Plaintiff filed an Amended Complaint in the Superior Court on March 18, 2016. Dkt. 1-4
13 at 4. The caption of the Amended Complaint listed the defendant as James Randi of JREF.
14 Id. The first paragraph alleged causes of action against James Randi and Stefan H. Black.
15 Id. The third paragraph again stated that the defendant was web.randi.org, and the fourth
16 stated that the defendants joined under Cal. Code. Civ. Proc. § 382 were "Stefan H. Black,
James Randi, of James Randi Educational Foundation." Id. at 4-5. The Amended
Complaint stated claims for breach of contract, including a claim under the Cal. Pub. Con.
Code § 10285.1. Id. at 5. In paragraph 11, the Amended Complaint also appears to have
referred back to the fraud claims that were alleged in the original Complaint. Id. at 5."

17 (District Court Order of 2/14/2017, RJN, Exh. C, p. 2.)

18 "Plaintiffs declaration, which was filed August 8, 2016, stated that the Motions to Dismiss
19 were incorrectly captioned and should have listed the defendants as 'James Randi & Stefan
H. Black of James Randi Educational Foundation,' and not James Randi as an individual."

20 (District Court Order of 2/14/2017, RJN, Exh. C, p. 3.)

21 "Neither the Complaint nor the FAC clearly defines either the parties or the claims
22 involved in this litigation. . . .

23 "As noted above, the FAC names as defendants "James Randi of James Randi Educational
24 Foundation," "James Randi, and Stefan H. Black," "Web pagellwebsandi.org Registered
25 Nonprofit Se[c]retary of State California," and "Stefan H. Black, James Randi, of James
26 Randi Educational Foundation." FAC, Dkt. 1-4 at 4-5. Plaintiff's subsequent filings suggest
27 that she intended to sue Randi and Black in their capacities as representatives of JREF. For
example, in Plaintiff's August 8, 2016 declaration, she stated that the Motions to Dismiss
were incorrectly captioned and should have listed the defendants as "James Randi & Stefan
H. Black of James Randi Educational Foundation," and not James Randi as an individual.
Dkt. 18. at 1-2. In her Opposition, she stated, "This is not a personal Complaint. James
Randi was affiliated in year 2013 and 2012, to the James Randi Educational Foundation.
Stefan H. Black, [a]gent of service of [p]rocess[.]... " Dkt. 30 at 1. She also stated, "This

28 4846-1279-7285.1

(50)

[REDACTED] ORDER

(8)

1 case has never been a [p]ersonal [c]ase, [t]he Defendant tried to make it as personal. It's
2 not. The James Randi Educational Foundation is [I]liable." Id. at 4.

3 "Pursuant to Fed. R. Civ. P. 10, [t]he title of the complaint must name all the parties."
4 However, the Ninth Circuit "held in *Hoffman v. Halden*, 268 F.2d 280 (9th Cir. 1959), that
5 the question of whether a defendant is properly in a case is not resolved by merely reading
6 the caption of a complaint." *Hollcroft v. Dep't of Treasury, I.R.S.*, 687 F. Supp. 510, 515
(E.D. Cal. 1988). "Rather, a party may be properly in a case if the allegations in the body
of the complaint make it plain that the party is intended as a defendant." Id. (emphasis in
original).

6 (District Court Order of 2/14/2017, RJN, Exh. C, p. 4.)

7
8 "The Complaint contained more specific allegations that JREF had created the Challenge
9 for "anyone who can prove in their psychic, and paranormal claims, [g]host[s], spir[i]ts,
10 [or] life after death." Dkt. 1-5 at 11. According to the Complaint, starting in February 2007
11 and continuing for the next five years, Plaintiff received incoming calls from phone
12 numbers associated with her mother, who was deceased. Dkt. 1-5 at 10. Plaintiff alleged
13 that she completed the Application with proof of her contact with the dead, and twice sent
14 the notarized Application to JREF --on October 6, 2012, and again on June 17, 2013. Id.
15 The Complaint also alleged that Plaintiff presented proof of her supernatural abilities in the
16 form of three Facebook albums, titled "Maggie Ann's Psychic World," "The Tree of Life,"
and "The Holy Bible," as well as through a YouTube channel and telephone records
attached to her Application. Id. The Complaint stated that Plaintiff made the Facebook
albums and YouTube channel public "[s]o James Randi could mon[ito]r me and my
activ[i]ty with the spiritual side." Id. The Complaint alleged that as a result of "putting all
[her] personal gift[s] out in the open," Plaintiff has been harassed by people who do not
like that she has proven that there is life after death. Id. It also alleged that as of October 1,
2015, the "About" tab on the JREF website stated that the Challenge had been terminated,
and that Randi terminated the Challenge to avoid paying Plaintiff after she demonstrated
the existence of the supernatural. Id.

17 "None of these allegations involves Black or Randi personally. . . .

18 [¶]

19 "Plaintiff has alleged a false representation, i.e., that JREF stated it would provide a \$1
20 Million reward to anyone who could prove the existence of the supernatural, but did not
intend to fulfill that promise."

21 (District Court Order of 2/14/2017, RJN, Exh. C, p. 8.)

22 "it is apparent that Plaintiff did not intend to sue Randi in his individual capacity. Thus, the
23 pertinent jurisdictional issue is as to JREF."

24 (District Court Order of 2/14/2017, RJN, Exh. C, p. 10.)

25 "[Plaintiff's] Opposition suggests that JREF was the intended defendant, and that she
served JREF through Black. Opposition, Dkt. 30 at 4."

26 [¶]

27 "JREF clearly received actual notice of this action. . . ."

28 4846-1279-7285.1

(51)

6

[REDACTED] ORDER

(B)

1 (District Court Order of 2/14/2017, RJN, Exh. C, p. 12.)

2 "[I]t is uncontested that Plaintiff intended to file the action against JREF and not
3 against Randi and Black."

4 (District Court Order of 2/14/2017, RJN, Exh. C, p. 13.)

5 After the district court dismissed her complaint with leave to amend, Plaintiff failed to file
6 an amended complaint and the action was dismissed by the district court with prejudice. (See RJN,
7 Exh. D.) Plaintiff then appealed the dismissal. On 11/15/17, the Ninth Circuit Court of Appeal
8 dismissed plaintiff's appeal. (See RJN, Exh. E.) Plaintiff filed for a Writ of Certiorari in the
9 United States Supreme Court; on 03/05/18, the United States Supreme Court denied plaintiff's
10 petition for a writ of certiorari. (See RJN, Exh. F, p. 3.)

11 On 04/10/17, ten days after the district court dismissed her complaint with prejudice,
12 plaintiff commenced a second action in the district court for the Central District of California
13 against defendants James Randi Educational Foundation, Founder James Randi, and Stefan H.
14 Black. (See RJN, Exh. G.) Once again, plaintiff alleged she had provided proof of paranormal
15 activity but that defendants had refused to pay her the \$1 million prize as promised on JREF's
16 website. (See generally, RJN, Exh. G.) On 05/04/17, the district court denied plaintiff's request to
17 proceed *in forma pauperis* and noted that "[t]o the extent the proposed Complaint repeats
18 allegations plaintiff made in *Morrison-Calderon v. Randi* CV 16-4270-JAK (RAOx), an action
19 previously dismissed with prejudice, the principles of res judicata and claim preclusion would
20 render the present Complaint frivolous. (See RJN, Exh. H, p. 2.)

21 There is no indication in the record the plaintiff ever paid the filing fees in district court, or
22 otherwise attempted to pursue her second complaint in district court. On 08/16/17, the Ninth
23 Circuit dismissed the appeal of the district court's action for lack of jurisdiction. (See RJN, Exh.
24 I.) That second complaint has therefore also been dismissed.

25 At various times, pleadings filed by Plaintiff have listed the defendant(s) in the case as the
26 James Randi Educational Foundation, James Randi, Stefan H. Black and the One Million Dollar
27 Challenge. Nonetheless, it is clear that the actual defendant whom plaintiff is suing is the James

28 Randi Educational Foundation:
4846-1279-7285.1

52

7

~~PROPOSED~~ ORDER

(B)

- 1 • Plaintiff herself previously stated that the original case (BC601443) which was
2 removed to federal court, was filed against the James Randi Educational Foundation,
3 and was not filed against James Randi or Stefan H. Black personally. According to
4 plaintiff, "It's not personal. Case is filed on The James Randi Educational
5 Foundation. Persons names are and were Founder James Randi, And Stefan H. Black
6 is the Agent of Service. (Exh. G, p. 2 [punctuation and spelling in original].)
- 7 • Plaintiff reaffirmed this position in the opposition she filed to this motion. She states
8 that she "never meant any civil complaint contract to be a personal case away from
9 the James Randi Educational Foundation. . . . I repeatedly said this case is Margaret
10 Morris-Calderon vs. James Randi Educational Foundation." (Opposition, p. 3:13-20.)
- 11 • On the second and subsequent pages of Plaintiff's complaint in this case, she states
12 that the "short title" of this case is "One Million Dollar Challenge." (See Complaint,
13 filed 11/27/2017.) Similarly, Plaintiff lists the short title of her first complaint
14 (BC601443) as "James Randi Million Dollar Challenge." (See Complaint, filed
15 3/18/2016; see RJN, Exh. B.)
- 16 • Plaintiff states that Stefan Black was only listed in the FAC to the original complaint
17 (prior to its removal to Federal Court) because Black was the agent for service of
18 process of the James Randi Educational Fund; she also states that James Randi was
19 not a personal defendant in the first lawsuit, but only listed as "James Randi 'of'
20 James Randi Education Fund. (Opposition, p. 7:8-11; p. 9:4-5; see also opposition, p.
21 9:18-19.)
- 22 • Plaintiff recently filed a document specifically affirming that her lawsuits were
23 against Defendant James Randi Educational Foundation. According to Plaintiff, the
24 inclusion of both James Randi and Stefan Black as individuals in her complaints was
25 a "clerical error." (See Plaintiff's "Notice to Ame[n]d to Correct Clerical Error
26 473(d)," filed on 4/17/2018.)

27 We therefore are confronted with the following situation:

- 28 • Plaintiff filed a complaint (BC601448) against the James Randi Educational
Foundation in Superior Court. That case was removed to federal court and ultimately
dismissed with prejudice.
- Ten days after her case was dismissed with prejudice, Plaintiff filed another action in
the federal district court against the James Randi Educational Foundation.
- The captions to the various complaints – both in state and federal court – sometimes
refer to the James Randi Educational Foundation, or James Randi, or Stefan Black, or
the One Million Dollar Challenge. Nonetheless, it is clear that both the actual and
intended defendant in both her original action and in her second action was the James
Randi Educational Foundation.
- Both cases were ultimately dismissed by the district court.
- Appeals to the Ninth Circuit were dismissed, and a writ to the United States Supreme
Court was denied.
- Plaintiff has now filed a third action (this case, BC684574) alleging the same causes
of action against the James Randi Educational Foundation.

4846-1279-7285.1

53

8

[PROPOSED] ORDER

(B)

1 This Court recognizes that "a pro se complaint, however inartfully pleaded, must be held to
2 less stringent standards than formal pleadings drafted by lawyers." (*Estelle v. Gamble*, 429 U.S.
3 97, 106 [106, 97 S. Ct. 285, 50 L. Ed. 2d 251] (1976).) This Court also agrees that "[p]roviding
4 access to justice for self-represented litigants is a priority for California courts." (California Rules
5 of Court, rule 10.960, subdivision (b).)

6 Nonetheless, it would not advance the cause of justice to continue this charade. Plaintiff's
7 complaint has been dismissed twice. The Court recognizes that Plaintiff Morris-Calderon feels that
8 she has incontrovertible proof that her deceased mother has been in touch with her from beyond
9 the grave, and that justice will not be done until defendant James Randi Educational Fund pays her
10 \$1 million based on her proof of the paranormal. Everyone is entitled to her day in court.
11 However, no matter how much she feels aggrieved, plaintiff cannot continue to file the same case
12 over and over again. Her case against the James Randi Educational Foundation has been
13 dismissed twice before. Plaintiff does not get three bites at the apple. If res judicata is to mean
14 anything, this demurrer must be sustained.

15 The Court is denying Defendant's motion to declare plaintiff a vexatious litigant.
16 However, should plaintiff refile the same pleading yet again, this Court may well reconsider
17 whether plaintiff should be declared a vexatious litigant.

18 **CONCLUDING COMMENTS AND AN ALTERNATIVE GROUND FOR DISMISSING**
19 **THIS ACTION:**

20 Even if res judicata did not bar plaintiff's third complaint, the Court would dismiss this
21 complaint on its own motion. The allegations of Plaintiff's complaint are simply non-justiciable.

22 A judge should be able to dismiss claims "that are sufficiently fantastic to defy reality as
23 we know it: claims about little green men, or the plaintiff's recent trip to Pluto, or experiences in
24 time travel." (*Ashcroft v. Iqbal*, 556 U.S. 662, 696, 129 S. Ct. 1937, 1959, 173 L. Ed. 2d 868
25 (2009) J. Souter, dis.) Although this Court is not opining on whether plaintiff's claims are
26 fantastic, the case is nonetheless non-justiciable.

27
28 4846-1279-7285.1

(54)

1 If this case ever proceeded to trial, there could be a defense verdict if the defendant showed
2 that a valid contract was never entered into between Plaintiff and the James Randi Educational
3 Fund. There could also be a defense verdict if the trier of fact concluded that Plaintiff did not
4 meet her burden of proof.

5 However, in order for plaintiff to prevail in this action, she would have to prove that it is
6 more likely than not that there is life after death. Philosophers, theologians and politicians have
7 spent untold millennia debating this issue. Wars have been waged, societies founded, governments
8 overthrown, territories conquered, and way too much blood spilled in seemingly unending – and
9 ultimately unfruitful – attempts to settle these theological issues by political or military means.

10 Whether there is life-after-death is not an issue that the judicial system – be it this court,
11 sitting as the trier of fact, or 12 jurors comprising a cross-section of our community – is qualified
12 to decide.

13 Were this case to go to trial, this Court could not imagine how voir dire would proceed, or
14 what would qualify as a challenge for cause. Questioning potential jurors on their theistic or
15 atheistic beliefs would quickly run afoul of the First Amendment. In this respect, Plaintiff's
16 complaint is no different than a complaint asking for declaratory relief that God exists.

17 Further, any such jury verdict would immediately become fodder for Saturday Night Live,
18 late-night talk-show hosts, and the latest twitter feeds. Such a verdict – be it in favor of plaintiff or
19 defendant – would undermine the integrity and prestige of the courts.

20 The Courts are not qualified to determine if there is a God or if there is life-after-death. But
21 that latter determination is a necessary predicate to plaintiff prevailing in this action.

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 4846-1279-7285.1

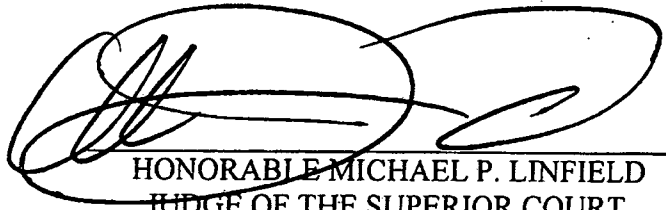
(55)

1 Had the Court not sustained defendant's demurrer without leave to amend, it would, on its
2 own motion, dismiss this case as non-justiciable.

3 IT IS SO ORDERED.

4 DATED: [REDACTED]

5 JUN 01 2018

6 

7 HONORABLE MICHAEL P. LINFIELD
8 JUDGE OF THE SUPERIOR COURT

9 MICHAEL LINFIELD

10 APPROVED AS TO FORM:

11
12 _____
13 Margaret Morris-Calderon
14
15
16
17
18
19
20
21
22
23
24
25
26
27

28 4846-1279-7285.1

06/08/2018
LEWIS
BRISBOIS
BISGAARD
& SMITH LLP
ATTORNEYS AT LAW

(56)

11

IT IS SO ORDERED

(B)

APR 15 2020

Court of Appeal, Second Appellate District, Division Five - No. B290811

Jorge Navarrete Clerk

S260810

Deputy

IN THE SUPREME COURT OF CALIFORNIA

En Banc

MARGARET MORRIS-CALDERON, Plaintiff and Appellant,

v.

THE JAMES RANDI EDUCATIONAL FOUNDATION, Defendant and Respondent.

The petition for review is denied.

CANTIL-SAKAUYE

Chief Justice

(57)

(B)

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DANIEL P. POTTER, CLERK

DIVISION 5

Los Angeles County Superior Court

MARGARET MORRIS-CALDERON,

Plaintiff and Appellant,

v.

THE JAMES RANDI EDUCATIONAL FOUNDATION et al.,
Defendants and Respondents.

B290811

Los Angeles County Super. Ct. No. BC684574

*** REMITTITUR ***

I, Daniel P. Potter, Clerk of the Court of Appeal of the State of California, for the Second Appellate District, do hereby certify that the attached is a true and correct copy of the original order, opinion or decision entered in the above-entitled cause on January 13, 2020 and that this order, opinion or decision has now become final.

Defendant is entitled to recover its costs on appeal.

Witness my hand and the seal of the Court
affixed at my office this

Apr 22, 2020

DANIEL P. POTTER, CLERK



by: K. Dominguez,
Deputy Clerk

cc: All Counsel (w/out attachment)
File



58

(B)

**Additional material
from this filing is
available in the
Clerk's Office.**