

SEP 17 2012

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>EDWARD DURNEY,</p> <p>Plaintiff - Appellant,</p> <p>v.</p> <p>MAGNA INTERNATIONAL, INC.; et al.,</p> <p>Defendants - Appellees.</p>
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No. 11-16402

D.C. No. 3:11-cv-00361-MHP

MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Marilyn H. Patel, District Judge, Presiding

Submitted September 10, 2012**

Before: WARDLAW, CLIFTON, and N.R. SMITH, Circuit Judges.

Edward Durney, an attorney, appeals pro se from the district court’s judgment dismissing his copyright infringement action on the basis of res judicata.

We have jurisdiction under 28 U.S.C. § 1291. We review de novo. *Holcombe v.*

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Hosmer, 477 F.3d 1094, 1097 (9th Cir. 2009). We affirm in part, and vacate and remand in part.

The district court properly dismissed the claims against the Magna defendants as barred by the doctrine of res judicata because Durney voluntarily dismissed two earlier lawsuits against the Magna defendants that were based on the same claims. *See* Fed. R. Civ. P. 41(a)(1)(B) (specifying when voluntary dismissal of action operates as “an adjudication on the merits”); *Owens v. Kaiser Found. Health Plan Inc.*, 244 F.3d 708, 713-14 (9th Cir. 2001) (describing elements of res judicata); *Lake at Las Vegas Investors Grp., Inc., v. Pac. Malibu Dev. Corp.*, 933 F.2d 724, 728 (9th Cir. 1991) (closely related entities may invoke Rule 41(a)(1)(B) res judicata).

However, judgment was not properly entered as to defendants Paperboy Ventures and Jaime Lewis, who have not yet appeared in this action and were not party to both of the earlier lawsuits for purposes of res judicata. *See Lake at Las Vegas Investors Grp., Inc.*, 933 F.2d at 728. Accordingly, we vacate judgment as to defendants Paperboy Ventures and Jaime Lewis and remand for further proceedings as to those defendants.

The parties shall bear their own costs on appeal.

AFFIRMED in part; VACATED in part; and REMANDED in part.