

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

SEP 21 2012

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

JOHN THEODORE ANDERSON,

Plaintiff - Appellant,

v.

PRIVATE CAPITAL GROUP; et al.,

Defendants - Appellees.

No. 11-16946

D.C. No. 2:11-cv-00058-JCM-
LRL

MEMORANDUM*

Appeal from the United States District Court
for the District of Nevada
James C. Mahan, District Judge, Presiding

Submitted September 10, 2012**

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

John Theodore Anderson appeals pro se from the district court's judgment dismissing his diversity action alleging breach of contract and other state law claims. We have jurisdiction under 28 U.S.C. § 1291. We review de novo a

* 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).

dismissal based on res judicata, *Stewart v. U.S. Bancorp*, 297 F.3d 953, 956 (9th Cir. 2002), and we affirm.

The district court properly dismissed Anderson’s action as barred by the doctrine of res judicata because it was precluded by a final judgment on the merits in Anderson’s prior Utah state court action against the same parties and alleging the same claims. *See Costantini v. Trans World Airlines*, 681 F.2d 1199, 1201 (9th Cir. 1982) (“[A] federal court sitting in diversity must apply the res judicata law of the state in which it sits.”); *Synder v. Murray City Corp.*, 73 P.3d 325, 332 (Utah 2003) (listing elements of res judicata under Utah state law).

Anderson’s remaining contentions with respect to personal jurisdiction in the prior Utah state court action, alleged breach of contract, estoppel, and “libel of review” are deemed waived because he failed to raise them before the district court. *See Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009) (per curiam).

Issues not expressly raised in the opening brief, including regarding the district court’s imposition of sanctions, are deemed waived. *See id.*

AFFIRMED.