

DEC 4 2014

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>ANTHONY GASTON,</p> <p>Plaintiff - Appellant,</p> <p>v.</p> <p>TERRONEZ,</p> <p>Defendant - Appellee.</p>
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No. 13-17551

D.C. No. 1:08-cv-01629-GSA

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Gary S. Austin, Magistrate Judge, Presiding**

Submitted November 18, 2014***

Before: LEAVY, FISHER, and N.R. SMITH, Circuit Judges.

California state prisoner Anthony Gaston appeals pro se from the district court's summary judgment in his action brought under 42 U.S.C. § 1983 and the

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

** The parties consented to proceed before a magistrate judge. *See* 28 U.S.C. § 636(c).

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

Americans with Disabilities Act (“ADA”) arising from defendant’s alleged denial of adult diapers for one week. We have jurisdiction under 28 U.S.C. § 1291. We review de novo the district court’s summary judgment on the basis of the doctrine of res judicata. *Hiser v. Franklin*, 94 F.3d 1287, 1290 (9th Cir. 1996). We affirm.

The district court properly granted summary judgment because Gaston alleged the same claims against the same defendant in a state court action in which there was a final judgment on the merits. *See Manufactured Home Cmty., Inc. v. City of San Jose*, 420 F.3d 1022, 1031 (9th Cir. 2005) (“To determine the preclusive effect of a state court judgment federal courts look to state law. California’s res judicata doctrine is based on a primary rights theory.” (citation omitted)).

AFFIRMED.