

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

MAY 19 2015

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

MARCUS L. HARRISON,

Plaintiff - Appellant,

v.

E. SMITH, Officer; et al.,

Defendants - Appellees.

No. 14-16962

D.C. No. 3:11-cv-03186-JST

MEMORANDUM\*

Appeal from the United States District Court  
for the Northern District of California  
Jon S. Tigar, District Judge, Presiding

Submitted May 13, 2015\*\*

Before: LEAVY, CALLAHAN, and M. SMITH, Circuit Judges.

Marcus L. Harrison, a California state prisoner, appeals pro se from the district court's summary judgment in his 42 U.S.C. § 1983 action alleging that defendant Smith retaliated against him by issuing a disciplinary report. We have jurisdiction under 28 U.S.C. § 1291. We review de novo, *Brodheim v. Cry*,

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\* 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).

584 F.3d 1262, 1267 (9th Cir. 2009), and we affirm.

The district court properly dismissed Harrison’s action as barred by res judicata because Harrison raised nearly identical claims against the same defendant in a prior federal action where the district court granted summary judgment on the merits. *See Stewart v. U.S. Bancorp*, 297 F.3d 953, 956-57 (9th Cir. 2002) (setting forth elements of the doctrine of res judicata, and explaining that res judicata bars “any claims that were raised or could have been raised ” in a prior action); *see also* Fed. R. Civ. P. 41(b) (a dismissal other than for lack of jurisdiction, improper venue, or improper joinder “operates as an adjudication upon the merits”).

Harrison’s request for judicial notice, as set forth in his opening brief, is denied.

Harrison’s motion for extension of time to file his reply brief, filed on April 6, 2015, is denied as unnecessary.

**AFFIRMED.**