

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

NOV 2 2016

FOR THE NINTH CIRCUIT

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

MACK A McCALLUM,

No. 15-15929

Plaintiff-Appellant,

D.C. No. 1:15-cv-00356-MCE-  
SAB

v.

STATE OF CALIFORNIA,

MEMORANDUM\*

Defendant-Appellee.

Appeal from the United States District Court  
for the Eastern District of California  
Morrison C. England, Jr., District Judge, Presiding

Submitted October 25, 2016\*\*

Before: LEAVY, GRABER, and CHRISTEN, Circuit Judges.

Mack A. McCallum appeals pro se from the district court's judgment dismissing his action alleging a violation of the ex post facto clause of the United States Constitution. We have jurisdiction under 28 U.S.C. § 1291. We review de novo a dismissal on the basis of res judicata, *Headwaters Inc. v. U.S. Forest Serv.*,

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\* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

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

399 F.3d 1047, 1051 (9th Cir. 2005), and we affirm.

The district court properly dismissed McCallum's action as barred by the doctrine of res judicata because McCallum's claims were raised against the State of California in his prior federal action which resulted in a final judgment on the merits. *See Stewart v. U.S. Bancorp*, 297 F.3d 953, 956 (9th Cir. 2002).

McCallum's motion, filed September 11, 2015, is denied.

**AFFIRMED.**