

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

FEB 24 2021

FOR THE NINTH CIRCUIT

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

APARNA VASHISHT-ROTA, an
individual,

Plaintiff-Appellant,

v.

HOWELL MANAGEMENT SERVICES,
LLC, a Utah limited liability company; et
al.,

Defendants-Appellees.

No. 19-55748

D.C. No. 3:18-cv-02010-L-AGS

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
M. James Lorenz, District Judge, Presiding

Submitted February 17, 2021**

Before: FERNANDEZ, BYBEE, and BADE, Circuit Judges.

Aparna Vashisht-Rota appeals pro se the district court's judgment
dismissing her diversity action alleging employment claims under California law.

We have jurisdiction under 28 U.S.C. § 1291. We review de novo a dismissal

* 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).

under Federal Rule of Civil Procedure 12(b)(6). *Hebbe v. Pliler*, 627 F.3d 338, 341 (9th Cir. 2010). We affirm.

The district court properly dismissed Vashisht-Rota's claims in this action as compulsory counterclaims because they arose from the same transaction or occurrence as the claims being litigated in a pending Utah state court case, No. 170100325, *Howell Mgmt. Servs. LLC v. August Educ. Grp., et al.* See Utah R. Civ. P. 13(a); *Pochiro v. Prudential Ins. Co. of America*, 827 F.2d 1246, 1249 (9th Cir. 1987) ("The question whether the [Plaintiff's] claims are compulsory counterclaims which should have been pleaded in the earlier. . . state court action is a question of state law."); *Yanaki v. Iomed Inc.*, 116 P.3d 962, 963-65 (Utah Ct. App. 2005) (under Utah R. Civ. P. 13(a)(1), employee's discrimination claims were compulsory counterclaims that should have been filed in employer's earlier-filed action, even if administrative remedies were not yet exhausted; the employment relationship was the transaction or occurrence that was the subject matter of the employer's claims); see also *Beck v. Fort James Corp. (In re Crown Vantage, Inc.)*, 421 F.3d 963, 973 n.7 (9th Cir. 2005) ("Federal courts will not permit an action to be maintained where the claims asserted should have been brought as a compulsory counterclaim in an earlier action.").

We do not consider arguments or allegations raised for the first time on appeal, or documents and facts not presented to the district court. See *Padgett v.*

Wright, 587 F.3d 983, 985 n.2 (9th Cir. 2009); *United States v. Elias*, 921 F.2d 870, 874 (9th Cir. 1990).

Vashisht-Rota's motion to withdraw Docket Entry No. 50 (Docket Entry No. 51) is granted. The Clerk will strike Docket Entry No. 50. All other pending motions and requests are denied.

AFFIRMED.