

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

APR 21 2023

FOR THE NINTH CIRCUIT

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

FREDERICK BATES,

No. 21-16867

Plaintiff-Appellant,

D.C. No. 5:20-cv-07609-BLF

v.

MEMORANDUM*

CITY OF SAN JOSE; ROBERT DAVIS,
individually and in his official capacity as
City of San Jose Chief of Police; ADONNA
AMOROSO, individually and in her official
capacity as City of San Jose Deputy Chief of
Police; TUCK YOUNIS, individually and in
his official capacity as City of Jose Police
Captain,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of California
Beth Labson Freeman, District Judge, Presiding

Submitted April 17, 2023**

Before: CLIFTON, R. NELSON, and BRESS, Circuit Judges.

Frederick Bates appeals pro se from the district court's judgment dismissing

* 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).

his independent action in equity and entering a vexatious litigant pre-filing order. We have jurisdiction under 28 U.S.C. § 1291. We review de novo a dismissal under Federal Rule of Civil Procedure 12(b)(6). *Prodanova v. H.C. Wainwright & Co., LLC*, 993 F.3d 1097, 1105 (9th Cir. 2021). We affirm.

The district court properly treated Bates’s independent action in equity as seeking the same post-judgment relief that he sought in *Bates v. City of San Jose*, No. C-06-05302 RMW (N.D. Cal. July 7, 2008). *See Nev. VTN v. Gen. Ins. Co. of Am.*, 834 F.2d 770, 775 (9th Cir. 1987) (“An independent action resembles a separate suit, yet it seeks in essence to duplicate the relief afforded by a [Rule 60] motion in the original proceedings. Motions and independent actions for relief commonly have been treated as interchangeable.”). Because Bates’s current challenges to prior decisions regarding his allegations of fraud, the preclusive effect of small claims court judgments, and judicial bias are consequently barred, the district court properly dismissed Bates’s action. *See United States v. Alexander*, 106 F.3d 874, 876 (9th Cir. 1997) (“[A] court is generally precluded from reconsidering an issue that has already been decided by the same court, or a higher court in the identical case.” (citation and internal quotation marks omitted)); *see also McQuillion v. Schwarzenegger*, 369 F.3d 1091, 1096 (9th Cir. 2004) (collateral estoppel bars parties from reraising identical issues that were previously litigated where the determination of that issue in a prior case was a “critical and

necessary part of the judgment in the earlier action” (citation and internal quotation marks omitted)).

The district court did not abuse its discretion in declaring Bates to be a vexatious litigant and entering a pre-filing review order against him after providing notice and an opportunity to be heard, developing an adequate record for review, making substantive findings as to the frivolous and harassing nature of his conduct, and narrowly tailoring the order to prevent abusive litigation. *See Ringgold-Lockhart v. County of Los Angeles*, 761 F.3d 1057, 1062 (9th Cir. 2014) (setting forth the requirements the district court must consider before imposing pre-filing restrictions); *Moy v. United States*, 906 F.2d 467, 469 (9th Cir. 1990) (setting forth standard of review).

We do not consider matters not specifically and distinctly raised and argued in the opening brief, or arguments and allegations raised for the first time on appeal. *See Padgett v. Wright*, 587 F.3d 983, 985 n. 2 (9th Cir. 2009).

AFFIRMED.