

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

APR 24 2023

FOR THE NINTH CIRCUIT

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

CIRRUS EDUCATION, INC., a corporation;  
et al.,

Plaintiffs-Appellees,

v.

CHRISTOPHER M. ADAMS, an individual,

Defendant-Appellant,

and

DAVID V. ADAMS, trustee of the  
Christopher Adams Trust; et al.,

Defendants.

No. 22-55899

D.C. No.

2:16-cv-09194-TJH-GJS

MEMORANDUM\*

Appeal from the United States District Court  
for the Central District of California  
Terry J. Hatter, Jr., District Judge, Presiding

Submitted April 20, 2023\*\*  
San Francisco, California

Before: WARDLAW and BENNETT, Circuit Judges, and SESSIONS,\*\*\* District

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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).

Judge.

Christopher M. Adams (“Adams”) appeals the district court’s denial of his motion for judgment on the pleadings with respect to a defamation claim asserted against him by Cirrus Beijing Corp. (“Cirrus”). As the parties are familiar with the facts of this case, we do not recite them here. We have jurisdiction over this appeal under 28 U.S.C. § 1292. Applying *de novo* review, *Herrera v. Zumiez, Inc.*, 953 F.3d 1063, 1068 (9th Cir. 2020), we reverse and remand.

In a previous appeal, Cirrus challenged the district court’s dismissal of its defamation claim under Federal Rule of Civil Procedure 12(b)(6). *Cirrus Beijing Corp. v. Adams*, 772 Fed. App’x 600, 601 (9th Cir. 2019). We reversed. *Id.* On remand, Adams moved for judgment on the pleadings on the defamation claim under Federal Rule of Civil Procedure 12(c). In support of his motion, he submitted a foreign legal expert’s declaration for the district court’s review pursuant to Federal Rule of Civil Procedure 44.1. Notwithstanding the submission of new evidence, the district court held that the Rule 12(c) motion was barred by our prior mandate and certified its order for interlocutory appeal. Adams appeals that ruling.

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\*\*\* The Honorable William K. Sessions III, United States District Judge for the District of Vermont, sitting by designation.

Our mandate in the previous appeal considered only the facts set forth in the complaint. We did not address, or bar further consideration of, whether additional evidence might support Adams’ argument for dismissal. Adams properly presented such additional evidence in his motion for judgment on the pleadings. *See de Fontbrune v. Wofsy*, 838 F.3d 992, 1000 (9th Cir. 2016) (holding that district courts may “consider[] foreign legal materials—including expert testimony and declarations—at the pleading stage . . .”). Given the submission of new evidence, the Rule 12(c) motion was not barred by our mandate. The district court therefore erred in denying the motion on that basis.

We further hold that the merits of the motion for judgment on the pleadings, as well as any questions regarding disputed material facts, are best considered in the first instance by the district court on remand. *See Planned Parenthood of Greater Washington & N. Idaho v. U.S. Dep’t of Health & Hum. Servs.*, 946 F.3d 1100, 1111 (9th Cir. 2020).

Costs on appeal are awarded to Adams.

**REVERSED and REMANDED.**