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This case was not selected for publication in West's Federal Reporter. See Fed. Rule of Appellate Procedure 32.1 generally governing citation of judicial decisions issued on or after Jan. 1, 2007. See also U.S.Ct. of App. 9th Cir. Rule 36-3. United States Court of Appeals, Ninth Circuit.

Carla CARR, an individual, Plaintiff-Appellant,

v.

LOS ANGELES COUNTY DEPARTMENT
OF AUDITOR-CONTROLLER, a local
public entity; Does, Defendants-Appellees.

No. 16-56553

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Submitted March 6, 2018* Pasadena, California

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Filed March 12, 2018

Appeal from the United States District Court for the Central District of California, [George H. King](#), District Judge, Presiding, DC No. CV 16-0506 GHK

Attorneys and Law Firms

[Franklin L. Ferguson, Jr.](#), Esquire, Attorney, Law Office of Franklin L. Ferguson, Jr., Los Angeles, CA, for Plaintiff-Appellant

[Jeffrey Mark Hausman](#), Esquire, Attorney, Hausman & Sosa, LLP, Woodland Hills, CA, for Defendant-Appellee

Before: [REINHARDT](#), [TASHIMA](#), and [NGUYEN](#), Circuit Judges.

MEMORANDUM **

Carla Carr appeals the district court's dismissal on claim preclusion grounds of her employment discrimination action against the Los Angeles County Department of the Auditor-Controller (the "County"). Because Carr's federal action seeks redress for the same injuries as her prior state court lawsuit, which was resolved against her on the merits, Carr's federal action is barred by California claim preclusion law. We therefore affirm.

1. Carr contends that her federal action involves a different primary right than her California state court lawsuit. "In determining the preclusive effect of a state-court judgment, this court must 'refer to the preclusion law of the State in which judgment was rendered.' "  [Diruzza v. Cty. of Tehama](#), 323 F.3d 1147, 1152 (9th Cir. 2003) (quoting  [Marrese v. Am. Acad. of Orthopaedic Surgeons](#), 470 U.S. 373, 380, 105 S.Ct. 1327, 84 L.Ed.2d 274 (1985)). In California, res judicata applies if:

- (1) A claim or issue raised in the present action is identical to a claim or issue litigated in a prior proceeding;
- (2) the prior proceeding resulted in a final judgment on the merits; and
- (3) the party against whom the doctrine is being asserted was a party or in privity with a party to the prior proceeding.

***781**  [People v. Barragan](#), 32 Cal.4th 236, 9 Cal.Rptr.3d 76, 83 P.3d 480, 492 (2004) (internal citations and quotation marks omitted). Carr concedes that the second and third elements apply.

To determine whether a claim is identical to a claim litigated in a prior proceeding, California courts apply the "primary rights theory."  [Boeken v. Philip Morris USA, Inc.](#), 48 Cal.4th 788, 108 Cal.Rptr.3d 806, 230 P.3d 342, 348 (2010). Under that theory, a "cause of action is the right to obtain redress for a harm suffered, regardless of the specific remedy sought or the legal theory ... advanced."  [Id.](#) "[T]he determinative factor is the harm suffered. When two actions involving the same parties seek compensation for the same harm, they generally involve the same primary right."  [Id.](#); accord  [Adam Bros. Farming, Inc. v. Cty. of Santa Barbara](#), 604 F.3d 1142, 1149 (9th Cir. 2010).

Carr's federal action is premised on the same injuries—the County's adverse employment actions—as her California state court lawsuit; the federal complaint differs from the state complaint only in its allegations about the County's discriminatory motivations. The two lawsuits involve different legal theories, but seek to vindicate the same primary rights. Moreover, Carr was aware of and able

to raise her race discrimination claims in state court. In fact, Carr alleged race discrimination on charges filed with the California Department of Fair Employment and Housing *prior* to her state court suit. Carr's federal action is therefore barred by California claim preclusion law.¹

2. Carr also contends that her federal action is premised on different harms than those litigated in state court because her substantive due process claim seeks redress for the County's racially discriminatory litigation conduct. However, Carr's complaint includes no factual allegations or legal contentions related to the County's conduct during the state court lawsuit or administrative proceedings; it is entirely focused on the

County's adverse employment actions. Carr has not identified any factual allegations suggesting that leave to amend to develop her discriminatory litigation claim would be anything but futile.  [Manzarek v. St. Paul Fire & Marine Ins. Co., 519 F.3d 1025, 1034 \(9th Cir. 2008\).](#)

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The judgment of the district court is **AFFIRMED**.

All Citations

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Footnotes

* The panel unanimously finds this case suitable for decision without oral argument. See [Fed. R. App. P. 34\(a\)\(2\)\(C\)](#).

** This disposition is not appropriate for publication and is not precedent except as provided by [Ninth Circuit Rule 36-3](#).

1 Because we affirm the district court's dismissal on claim preclusion grounds, we do not reach the County's alternative argument that Carr's federal claims are barred by the statute of limitations.

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