EXHIBIT - A

NOT FOR PUBLICATION

FILED

APR 25 2025

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

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ANTHONY JAMES MERRICK,

Plaintiff - Appellant,

v.

KENNETH HERMAN, Administrator of the Religious and Volunteer Services for the Arizona Department of Corrections, Rehabilitation and Reentry, in his official and individual capacities,

Defendant - Appellee.

No. 24-4464

D.C. No. 2:23-cv-00403-SPL-MTM

MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
Steven Paul Logan, District Judge, Presiding

Submitted April 22, 2025**

Before: GRABER, H.A. THOMAS, and JOHNSTONE, Circuit Judges.

Arizona state prisoner Anthony James Merrick appeals pro se from the district court's judgment dismissing his action alleging claims under 42 U.S.C.

* 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).

§ 1983 and the Religious Land Use and Institutionalized Persons Act arising from the denial of religious accommodations in prison. We have jurisdiction under 28 U.S.C. § 1291. We review de novo a dismissal under Federal Rule of Civil Procedure 12(c) and on the basis of claim preclusion. *Harris v. County of Orange*, 682 F.3d 1126, 1131 (9th Cir. 2012). We affirm.

The district court properly dismissed Merrick's action because Merrick raised, or could have raised, his claims in a prior federal action, which involved the same parties or their privies and resulted in a final judgment on the merits. *See Stewart v. U.S. Bancorp*, 297 F.3d 953, 956 (9th Cir. 2002) (setting forth the elements of claim preclusion under federal law).

The district court did not abuse its discretion in denying Merrick's motions to amend or supplement his complaint, for injunctive relief in the form of additional legal resources, for appointment of counsel, for recusal of the magistrate judge and district judge, and for a stay of the district court's scheduling order because Merrick failed to establish a basis for such relief. *See Palmer v. Valdez*, 560 F.3d 965, 970 (9th Cir. 2009) (setting forth standard of review and "exceptional circumstances" requirement for appointment of counsel); *Am. Trucking Ass'ns, Inc. v. City of Los Angeles*, 559 F.3d 1046, 1052 (9th Cir. 2009) (setting forth standard of review and requirements for injunctive relief); *United States v. Hernandez*, 109 F.3d 1450, 1453-54 (9th Cir. 1997) (setting forth standard

of review and standards for recusal of judges); *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 607-10 (9th Cir. 1992) (setting forth standard of review and "good cause" requirement to modify a scheduling order, including to file untimely pleadings); *Allen v. City of Beverly Hills*, 911 F.2d 367, 373 (9th Cir. 1990) (setting forth standard of review and factors used to assess the propriety of a motion for leave to amend).

We reject as unsupported by the record Merrick's contentions that the district court was biased against him.

AFFIRMED.

EXHIBIT-B

MGD

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Anthony James Merrick,

Plaintiff,

v.

Kenneth Herman, et al.,

Defendants.

No. CV-23-00403-PHX-SPL (MTM)

ORDER

Plaintiff Anthony James Merrick, who is confined in the Arizona State Prison Complex-Yuma, brought this pro se civil rights action pursuant to 42 U.S.C. § 1983 and the Religious Land Use and Institutionalized Persons Act (RLUIPA). Before the Court is Defendant Herman's Motion to Dismiss and/or for Judgment on the Pleadings (Claim Preclusion and Issue Preclusion). (Doc. 24.) Plaintiff was informed of his rights and obligations to respond (Doc. 26), and he opposes the Motion. (Doc. 44.) Also before the Court is Plaintiff's Motion Requesting Interlocutory Appeal Determination Pursuant to 28 U.S.C. § 1291(b). (Doc. 38.)

I. Second Amended Complaint

Plaintiff alleges the following. Plaintiff is a member of the Cearthanach Order of the Fundamental American Christian Temple ("FACT") church and is "similar to a priest or monk." (Doc. 6 at 4, 7.)[1] The Administrator of Pastoral Services for the Arizona

[1] The citation refers to the document and page number generated by the Court's Case Management/Electronic Case Filing system.

Department of Corrections, Rehabilitation and Reentry (ADCRR), Defendant Kenneth Herman, denied Plaintiff's requests for accommodations to engage in 12 mandatory practices of his religious faith. (*Id.* at 4.) Those12 practices are diet; Dotuig (education); Anamscail/Muinter (family relations); Solathar Gatherings; Elder Scrolls; Dadealus (vow of poverty); Dorookaun (book of remembrance); Plij (ceremonial blanket); Baku (smoke generated ceremonies); Doceanpoth (head coverings); Feasoeg (facial hair); and Dofleadh Gatherings (cosmic circle gatherings). (*Id.* at 5-6.) If Plaintiff attempted to engage in these practices without authorization, he would be subject to possible criminal charge for introducing contraband or violating ADCRR policies. (*Id.* at 8.)

In a prior lawsuit filed on October 24, 2019, Plaintiff sought relief against several defendants, including Herman, for denying his religious preference change. (*Id.* at 4.) While that action was pending, on October 19, 2020, Plaintiff was informed that all prisoners must substantiate their requests for religious accommodations by providing documentation from a published religious authority supporting the accommodation. (*Id.*) On November 20, 2020, Reverend Devon Blades of the FACT church emailed Defendant Herman 13 pages of documentation about the FACT church, including articles of faith/tenets, and Blades' proposed rules for practice by incarcerated people. (*Id.*) Reverend Blades informed Herman that Plaintiff was a member of the Cearthanach Order of the FACT church, and Blades asked that Plaintiff be allowed to participate in the 12 FACT religious practices. (*Id.*) Defendant Herman responded that the documentation would be put in Plaintiff's file. (*Id.* at 6.) Reverend Blades sent subsequent emails to Defendant Herman requesting dialogue on his proposed rules and that Plaintiff be allowed to practice Doceanpoth, Plij, Faesoeg, Baku, and diet, and Blades offered to help implement the practices and to explain any rituals and practices. (*Id.*) Defendant Herman responded around December 8, 2020, stating that Reverend Blades did not have permission to send Plaintiff anything and his request could not be granted because there was ongoing litigation regarding Plaintiff's religious claim. (*Id.*) The litigation in *Merrick v. Ryan*, CV-19-

05494-PHX-SPL (MTM) ended on July 7, 2022, when the Ninth Circuit Court of Appeals affirmed the Court's summary judgment order in that action. (*Id.*)

On July 16 and September 9, 2022, Plaintiff sent letters to Defendant Herman, requesting accommodation for his 12 religious practices, but Herman did not respond to either letter. (*Id.* at 7.) On September 13, 2022, Plaintiff filed a grievance, but the grievance was refused as "unprocessed" due to the Ninth Circuit's decision in *Merrick v. Ryan*. (*Id.*)

On October 24, 2022, Reverend Blades sent an email to Herman notifying him there was no litigation pending and requesting that Plaintiff's religious practices be approved. (*Id.*) Herman responded that the practices were not approved and told Blades not to send Plaintiff anything. (*Id.*)

On screening the Second Amended Complaint under 28 U.S.C. § 1915A(a), the Court determined that Plaintiff stated First Amendment and RLUIPA claims against Defendant Herman in his official and individual capacities and directed Herman to answer. (Doc. 7.)

In a motion for injunctive relief, Plaintiff sought an order requiring Defendant to accommodate the 12 FACT religious practices set forth in the Complaint. (Doc. 8 at 4.) In an Order denying injunctive relief, the Court noted that Plaintiff filed previous state and federal cases seeking accommodations for his FACT practices and was unsuccessful in those cases. (Doc. 18 at 5-6.) Although Plaintiff argued in his motion for injunctive relief that he was only challenging Defendant's policy requiring that a religious authority supply documentation about the practices, and that he was not challenging the denial of accommodations, the Court determined that Plaintiff was nevertheless seeking the same relief as in his prior cases, i.e., accommodations for his FACT religious practices. (*Id.* at 5.) The Court further determined that Plaintiff was unlikely to succeed on the merits of his claims in this action because this Court found in a prior case that Plaintiff had not shown his professed beliefs were sincerely held or that Defendants had substantially burdened Plaintiff's practice. (*Id.* at 6.) And the Court determined that Plaintiff was unlikely to

suffer irreparable harm because Plaintiff is already free to participate in most of his asserted religious practices without any accommodations. (*Id.*)

II. Legal Standards

A. Federal Rule of Civil Procedure 12(b)(6)

Dismissal of a complaint, or any claim within it, for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6) may be based on either a "'lack of a cognizable legal theory' or 'the absence of sufficient facts alleged under a cognizable legal theory.'" *Johnson v. Riverside Healthcare Sys., LP*, 534 F.3d 1116, 1121–22 (9th Cir. 2008) (quoting *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990)). In determining whether a complaint states a claim under this standard, the allegations in the complaint are taken as true and the pleadings are construed in the light most favorable to the nonmovant. *Outdoor Media Group, Inc. v. City of Beaumont*, 506 F.3d 895, 900 (9th Cir. 2007). A pleading must contain "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). But "[s]pecific facts are not necessary; the statement need only give the defendant fair notice of what . . . the claim is and the grounds upon which it rests." *Erickson v. Pardus*, 551 U.S. 89, 93 (2007) (internal quotation omitted). To survive a motion to dismiss, a complaint must state a claim that is "plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *see Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal*, 556 U.S. at 678. Where the plaintiff is a pro se prisoner, the court must "construe the pleadings liberally and [] afford the petitioner the benefit of any doubt." *Hebbe v. Pliler*, 627 F.3d 338, 342 (9th Cir. 2010).

B. Federal Rule of Civil Procedure 12(c)

Rule 12(c) of the Federal Rules of Civil Procedure provides that after the pleadings are closed, any party may move for judgment on the pleadings. For the purposes of a Rule 12(c) motion, the allegations of the nonmoving party are accepted as true, while the allegations of the moving party that contradict those of the nonmoving party are assumed

to be false. *See Elvig v. Calvin Presbyterian Church*, 375 F.3d 951, 955 (9th Cir. 2004). A motion for judgment on the pleadings may be granted only if, "taking all the allegations in the [nonmoving party's] pleading as true, the moving party is entitled to judgment as a matter of law." *McSherry v. City of Long Beach*, 423 F.3d 1015, 1021 (9th Cir. 2005) (citing *Owens v. Kaiser Found. Health Plan, Inc.*, 244 F.3d 708, 713 (9th Cir. 2001)). A Rule 12(c) motion is a vehicle for summary adjudication, but the standard is "functionally identical" to the standard governing a Rule 12(b)(6) motion. *Caffaso, U.S. ex rel. v. Gen. Dynamics C4 Sys., Inc.*, 637 F.3d 1047, 1054-55 n.4 (9th Cir. 2011). A district court may render a "judgment on the pleadings when the moving party clearly establishes on the face of the pleadings that no material issue of fact remains to be resolved and that it is entitled to judgment as a matter of law." *Yanez v. United States,* 63 F.3d 870, 872 (9th Cir. 1995) (quotations omitted); *see also George v. Pacific-CSC Work Furlough*, 91 F.3d 1227, 1229 (9th Cir. 1996) (holding that the burden is on the moving party to show that no material issue of fact remains to be resolved). To warrant dismissal, "it must appear to a certainty that the Plaintiff would not be entitled to relief under any set of facts that could be proved." *Carmen v. S.F. Unified Sch. Dist.*, 982 F. Supp. 1396, 1401 (N.D. Cal. 1997) (quoting *McGlinchy v. Shell Chemical Co.*, 845 F.2d 802, 810 (9th Cir. 1988)).

The Court may not go beyond the pleadings to resolve a motion for judgment on the pleadings. *See Hal Roach Studios, Inc. v. Richard Feiner and Co., Inc.*, 896 F.2d 1542, 1550 (9th Cir. 1989). The Court must accept the nonmovant's allegations as true and construe the pleading in the light most favorable to the plaintiff. *Fleming v. Pickard*, 581 F.3d 922, 925 (9th Cir. 2009); *see Erickson v. Pardus*, 551 U.S. 89, 94 (2007). If evidence outside of the pleadings is considered, the Rule 12(c) motion should be construed as one for summary judgment; however, documents outside the pleading may be considered without converting the motion if: (1) the complaint refers to the document; (2) the document is central to the claim; and (3) no party questions the document's authenticity. *See Marder v. Lopez*, 450 F.3d 445, 448 (9th Cir. 2006). In addition, the court may take

judicial notice of matters of public record without converting the motion into one for summary judgment.

III. Defendant's Motion

Defendant argues that Plaintiff's claim in this action is barred under the doctrines of res judicata and/or collateral estoppel. (Doc. 24.)

The doctrine of res judicata, also known as claim preclusion, bars the re-litigation of claims previously decided on their merits. *Headwaters, Inc. v. U.S. Forest Serv.*, 399 F.3d 1047, 1051 (9th Cir. 2005). "The elements necessary to establish res judicata are: '(1) an identity of claims, (2) a final judgment on the merits, and (3) privity between parties.'" *Id.* (quoting *Tahoe-Sierra Pres. Council, Inc. v. Tahoe Reg'l Planning Agency*, 322 F.3d 1064, 1077 (9th Cir. 2003)). The doctrine of res judicata pertains to any claims that were raised, or could have been raised, in a prior action, including claims pursuant to § 1983. *Holcombe v. Hosmer*, 477 F.3d 1094, 1097 (9th Cir. 2007); *W. Radio Servs. Co., Inc., v. Glickman*, 123 F.3d 1189, 1192 (9th Cir. 1997). It is irrelevant whether the new claims "were actually pursued in the action that led to the judgment; rather, the relevant inquiry is whether they could have been brought." *Tahoe-Sierra Preser. Council, Inc.*, 322 F.3d at 1078.

When applying this doctrine, federal courts give the same preclusive effect to state court judgments that the state would give to its own judgments. *Migra v. Warren City Sch. Dist. Bd. of Educ.*, 465 U.S. 75, 81 (1984). In Arizona, a prior judgment precludes a later suit when (1) the later suit is "based on the same cause of action" as the prior suit, (2) "a former judgment on the merits was rendered by a court of competent jurisdiction," and (3) "the matter now in issue between the same parties or their privies was, or might have been, determined in the former action." *Better Homes Const., Inc. v. Goldwater*, 53 P.3d 1139, 1142 (Ariz. Ct. App. 2002); *see also Barassi v. Matison*, 656 P.2d 627, 629 (Ariz. Ct. App. 1982) ("Under the doctrine of res judicata[,] an existing final judgment, rendered upon the merits without fraud o[r] collusion by a court of competent jurisdiction, is

conclusive as to every point decided and as to every point which could have been raised by the record and decided with respect to the parties thereto").

Defendant asserts that this is the ninth lawsuit that Plaintiff has filed on the same issue since he first became incarcerated in ADCRR. (Doc. 24 at 3, listing cases filed between 1995 and 2019.) Defendant argues that in his most recent case, Plaintiff alleged violations of his religious freedom by then ADCRR Director Ryan, Chaplain Kidwell, and Defendant Herman. (*Id.* at 4, citing *Merrick v. Ryan, et al.*, CV-19-05494-PHX-SPL (MTM) (D. Ariz.).) Defendant notes that the Court in that case ultimately granted summary judgment in favor of Defendants, and the Ninth Circuit affirmed, stating that "[t]he district court properly dismissed Merrick's claims against defendants Ryan, Shinn, and Herman because Merrick failed to allege facts sufficient to state any plausible claims." (*Id.* at 4-5, citing *Merrick v. Ryan*, No. 20-17504, 2022 WL 861186, at *1 (9th Cir. Mar. 23, 2022).)

Defendant argues that under the doctrine of res judicata, the prior adjudication of Plaintiff's claims concerning ADCRR's denial of his requests that it recognize his religious preference bars his present claim, and the Court should therefore grant judgment on the pleadings in favor of Defendant. (*Id.* at 6.)

A. Identity of Claims

"The central criterion in determining whether there is an identity of claims between the first and second adjudications is 'whether the two suits arise out of the same transactional nucleus of facts.'" *Frank v. United Airlines, Inc.*, 216 F.3d 845, 851 (9th Cir. 2000) (internal citation omitted).

Defendant argues that Plaintiff's prior case and the present case arise out of the same operative facts regarding the denial of his requests for accommodation for his FACT religion. (Doc. 24 at 7.) Defendant contends that the very religious beliefs the Arizona Supreme Court found to be insincere regarding Plaintiff's claim to be a practitioner of FACT are repeated here, and Plaintiff admits in his pleadings that his new religious designation, Cearthanach, is an order of the FACT church. (*Id.*) Defendant argues that these same issues were at the heart of the 2015 lawsuit, as well as the 2018 and 2019

lawsuits "that simply rehashed the same complaints." (*Id.* at 7-8.) And, Defendant argues Plaintiff is seeking substantially the same accommodations. (*Id.* at 8.)

Plaintiff does not respond to this argument.

In this case, Plaintiff is seeking the same relief in the form of accommodations as a practitioner of FACT, of which Cearthanach is an order, as in his prior federal and state court cases. Significantly, Plaintiff relies on the same nucleus of alleged facts regarding the denial of accommodations he claims are necessary for him to practice his FACT religion.

For example, in a lawsuit Plaintiff filed in 2015 under RLUIPA and the First and Fourteenth Amendments, Plaintiff was attempting to change his religious preference to FACT and obtain accommodations such as a prayer blanket, tobacco ceremonies, shaving waiver, head covering, remembrance book, sacred religious books and sagas, elder and feast and festival gatherings, feasts and festivals, education, vow of poverty, and family relations. (*See* Doc. 61 in *Merrick v. Ryan*, CV-15-00820-PHX-SPL (BSB) (D. Ariz.).)[2] In that case, this Court granted summary judgment to Defendants because Plaintiff had not shown his professed beliefs were sincerely held or that Defendants had substantially burdened Plaintiff's practice, especially since Plaintiff was already free to participate in the majority of his asserted religious practices without any accommodations such as purchasing a prayer blanket, smoking, possessing religious books, taking education classes, and communicating with family. (*Id.*, *aff'd*, *Merrick v. Ryan*, 719 F. App'x 702 (9th Cir. April 17, 2018).)

In a 2019 Special Action filed in state court, Plaintiff asked that ADCRR be required to change Plaintiff's religious preference to FACT; the Arizona Court of Appeals found that the Superior Court had correctly ruled the case should be dismissed due to claim preclusion because the same issues were at the center of Plaintiff's 2015 case in federal

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[2] For the sake of this analysis, the Court takes judicial notice of the documents and prior court Orders. *See* Fed. R. Evid. 201(b); *Kelly v. Johnston*, 111 F.2d 613, 615 (9th Cir. 1940) (a court may take judicial notice of its own records).

court. (*See Merrick v. Ryan*, 1 CA-CV 19-0080, 2019 WL 5561045, at *1 (Ariz. Ct. App. Oct. 29, 2019).)

In a separate 2019 action before this Court, Plaintiff alleged that his Fourteenth Amendment rights were violated when he was not allowed to change his religious preference to Cearthanach, resulting in the denial of special diets, head coverings, gatherings or meetings, religious books/texts, smoking, special visits, shaving waiver, education, and store. (*See* Doc. 1 in *Merrick v. Ryan*, CV-19-05494-PHX-SPL (MTM) (D. Ariz.).) This Court granted summary judgment to Defendants because it found no evidence that not allowing Plaintiff to designate a specific religious preference prevented him from practicing his religion or otherwise burdened him or his religion. (Doc. 52 in *Merrick v. Ryan*, CV-19-05494-PHX-SPL (MTM) (D. Ariz.), *aff'd*, *Merrick v. Ryan*, No. 20-17504, 2022 WL 861186 (9th Cir. March 23, 2022).)

As in each of these prior cases, the same evidence about the FACT church, its practices, and the denial of accommodations by ADCRR officials would be needed to sustain this action, meaning this and the prior cases arise out of the same transactional nucleus of facts. Thus, the first element of the res judicata analysis is satisfied.

B. Judgment on the Merits

Defendant argues that the prior case (*Merrick v. Ryan*, CV-19-05494-PHX-SPL (MTM) (D. Ariz.)) was decided on the merits when the Court dismissed the case at summary judgment and the decision was later upheld by the Ninth Circuit Court of Appeals. (Doc. 24 at 8, citing *Merrick v. Ryan*, No. 20-17504, 2022 WL 861186 at *1 (9th Cir. March 23, 2022).)

Plaintiff responds that his RLUIPA claim has never been heard on the merits. (Doc. 44 at 2.) Plaintiff argues that *Merrick v. Ryan* was decided on the issue of sincerity and that Court found a lack of sincerity "when Plaintiff did not follow Defendants[']' policies in the request procedure." (*Id.*) Plaintiff contends the merits of his RLUIPA claim could not be heard "without the predicate of sincerity." (*Id.*)

Plaintiff also argues that Chaplain Kidwell was the sole Defendant in 2019 state court case, and that case did not involve a request for accommodations but only involved "the recording of the plaintiff's religious preference. Not accommodations." (*Id.* at 3-4 (referring to *Merrick v. Ryan*, 1 CA-CV 19-0080, 2019 WL 5561045, at *1 (Ariz. Ct. App. Oct. 29, 2019).) And Plaintiff argues the Ninth Circuit decision in No. 20-17504 did not involve accommodations or Defendant Herman and so "the Court has never reached the merits of a RLUIPA claim regarding the Plaintiff as an individual and especially as a representative of the Cearthanach order." (*Id.* at 3 (referring to *Merrick v. Ryan*, CV-19-05494-PHX-SPL (MTM) (D. Ariz.).)

Contrary to Plaintiff's argument, his RLUIPA claim was heard on the merits in his 2015 district court case, which included RLUIPA and First Amendment free exercise claims related to his participation in the FACT church and Plaintiff's requests for religious accommodations for such things as a prayer blanket, tobacco ceremonies, no shaving, head coverings, remembrance book, sacred religious books and sagas of all faiths, elder and feast and festival gatherings, feast and festivals, education, vow of poverty, and family relations. (*See* Doc. 61 in *Merrick v. Ryan*, No. CV-15-00820-PHX-SPL (BSB) (May 9, 2017).) Following screening, the Defendants in that case were then-ADC Director Ryan and then-ADC Administrator of Pastoral Activities Michael Linderman. (*Id.* at 2.) At summary judgment, the Court found that Plaintiff failed to put forth relevant evidence that would show or create a genuine issue of material fact that his professed beliefs were, in fact, sincerely held. (*Id.* at 11.) The Court entered judgment and terminated the action with prejudice. (Doc. 62 in *Merrick v. Ryan*, No. CV-15-00820-PHX-SPL (BSB) (May 9, 2017).) The Ninth Circuit Court of Appeals affirmed the Court's grant of summary judgment on Plaintiff's free exercise and RLUIPA claims. *See Merrick v. Ryan*, 719 F. App'x 702, 703 (9th Cir. April 17, 2018).

Accordingly, in the 2015 district court case alone, there was a final judgment on the merits, and the second element of the res judicata analysis is satisfied.

C. Privity of Parties

The third requirement for purposes of claim preclusion is that the parties to the action be the same as, or be in privity with, the parties to the prior action. In this way, res judicata protects the same parties or their privies "from the burden of relitigating an identical issue" and promotes "judicial economy by preventing needless litigation." *Hall v. Lalli*, 977 P.2d 776, 779 (Ariz. 1999) (en banc) (quoting *Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 326 (1979)). Privity between parties exists where there is "sufficient commonality of interest" between the parties. *Tahoe-Sierra Pres. Council, Inc. v. Tahoe Reg'l Planning Agency*, 322 F.3d 1064, 1081 (9th Cir. 2003) (quoting *In re Gottheiner*, 70 F.2d 1136, 1140 (9th Cir. 1983) and citing *Stratosphere Litigation L.L.C. v. Grand Casinos, Inc.*, 298 F.3d 1137, 1142 n.3 (9th Cir. 2002) (finding privity when a party is "so identified in interest with a party to former litigation that he represents precisely the same right in respect to the subject matter involved") (citation omitted); *Shaw v. Hahn*, 56 F.3d 1128, 1131–32 (9th Cir.1995) (finding privity when the interests of the party in the subsequent action were shared with and adequately represented by the party in the former action); *United States v. ITT Rayonier, Inc.*, 627 F.2d 996, 1003 (9th Cir.1980) ("[A] 'privy' may include those whose interests are represented by one with authority to do so.").).

Defendant argues that he was named a Defendant in Plaintiff's prior cases and there are no substantially different facts alleged in the current claim. (Doc. 24 at 8.) Defendant, the current Administrator of Pastoral Activities, cites to the 2019 case, *Merrick v. Ryan*, in which Plaintiff sued the Director of the ADC, the Administrator of Pastoral Activities, and the Senior Chaplain—the same parties he sued in 2015. (*Id.*, citing *Merrick v. Ryan*, No. 1 CA-CV 19-0080, 2019 WL 5561045, at *3 (Ariz. Ct. App. Oct. 29, 2019).)

Plaintiff responds that Defendant Herman was not a defendant in *Merrick v. Ryan*, CV-19-05494-PHX-SPL, "nor was his office included," and Plaintiff argues that case did not involve religious accommodation.[3] (Doc. 44 at 2.)

The Administrator of Pastoral Activities was a defendant in the 2015 *Merrick v. Ryan* district court case, and the Administrator of Pastoral Activities (Defendant Herman) was a named defendant in the state court 2019 *Merrick v. Ryan* case.[4] Defendant Herman is the current Administrator of Pastoral Activities, which creates a privity of interests both in the actual person holding the office and in the office of the Administrator of Pastoral Activities. *Shaw*, 56 F.3d at 1131–32.

Accordingly, the third and final element of the res judicata analysis is satisfied

Because it is clear from the above analysis that Plaintiff attempts in this action to bring the same claims he brought or could have brought against the same Defendant in the 2015 and 2019 cases, res judicata applies and precludes Plaintiff from relitigating these claims. Accordingly, the Court will grant Defendants' Motion for Judgment on the Pleadings and will dismiss this action with prejudice.[5]

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[3] Contrary to Plaintiff's assertions, Defendant Herman was a defendant in the federal district court 2019 *Merrick v. Ryan* case, but the Court dismissed Defendant Herman at the screening stage for failure to state a claim. (Doc. 5 in *Merrick v. Ryan*, CV-19-05494-PHX-SPL (MTM) (Nov. 6, 2019).) The Ninth Circuit found that the district court properly dismissed Plaintiff's claim against Herman because Plaintiff failed to allege facts sufficient to state any plausible claims. (*Merrick v. Ryan*, No. 20-17504, 2022 WL 861186) (March 23, 2022).)

[4] Michael Linderman was the Administrator of Pastoral Activities in the 2015 case, and the 2019 state court decision does not identify by name the Administrator of Pastoral Activities, but the State of Arizona's Answering Brief in that Special Action lists one Defendant as "Chaplain Herman, Administrator of Pastoral Activities." *See* Appellate Brief in *Merrick v. Ryan*, No. 1 CA-CV 19-0080, 2019 WL 3408739 (Ariz. Ct. App. July 2, 2019).

[5] Because it is clear that dismissal is warranted on res judicata grounds, the Court need not address Defendants' alternate argument that Plaintiff fails to state a claim.

IT IS ORDERED

(1) The reference to the Magistrate Judge is **withdrawn** as to Defendants' Motion to Dismiss and/or for Judgment on the Pleadings (Claim Preclusion and Issue Preclusion) (Doc. 24) and Plaintiff's Motion Requesting Interlocutory Appeal Determination Pursuant to 28 USC § 1291(b) (Doc. 38).

(2) Defendants' Motion to Dismiss and for Judgment on the Pleadings (Doc. 24) is **granted**.

(3) Plaintiff's Motion Requesting Interlocutory Appeal Determination Pursuant to 28 USC § 1291(b) (Doc. 38) is **denied as moot**.

(4) This action is **dismissed with prejudice**. The Clerk of Court must enter judgment accordingly.

Dated this 15th day of July, 2024.

Honorable Steven P. Logan
United States District Judge

EXHIBIT-C

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

AUG 28 2025

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

ANTHONY JAMES MERRICK,

Plaintiff - Appellant,

v.

KENNETH HERMAN, Administrator of the Religious and Volunteer Services for the Arizona Department of Corrections, Rehabilitation and Reentry, in his official and individual capacities,

Defendant - Appellee.

No. 24-4464

D.C. No. 2:23-cv-00403-SPL-MTM

District of Arizona,
Phoenix

ORDER

Before: GRABER, H.A. THOMAS, and JOHNSTONE, Circuit Judges.

The panel has voted to deny the petition for panel rehearing.

The full court has been advised of the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. *See* Fed. R. App. P. 40.

The petition for panel rehearing and petition for rehearing en banc (Docket Entry Nos. 26, 28, 29) are denied.

No further filings will be entertained in this closed case.

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

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

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KENNETH HERMAN, Administrator of the Religious and Volunteer Services for the Arizona Department of Corrections, Rehabilitation and Reentry, in his official and individual capacities,

Defendant - Appellee.

No. 24-4464

D.C. No. 2:23-cv-00403-SPL-MTM

District of Arizona, Phoenix

ORDER

Before: GRABER, H.A. THOMAS, and JOHNSTONE, Circuit Judges.

The panel has voted to deny the petition for panel rehearing.

The full court has been advised of the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. *See* Fed. R. App. P. 40.

The petition for panel rehearing and petition for rehearing en banc (Docket Entry Nos. 26, 28, 29) are denied.

No further filings will be entertained in this closed case.