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**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

BRIAN and MARLENE FINANDER,

Plaintiffs - Appellants,

v.

ESKANOS & ADLER, et al.,

Defendants - Appellees.

No. 06-56276

D.C. No. CV-06-02669-DSF

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Dale S. Fischer, District Judge, Presiding

Submitted October 22, 2007**

Before: B. FLETCHER, WARDLAW, and IKUTA, Circuit Judges.

Brian and Marlene Finander appeal pro se from the district court's order dismissing their statutory and tort claims pursuant to Fed. R. Civ. P. 12(b)(6) on

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

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

the basis of res judicata. We have jurisdiction pursuant to 28 U.S.C. § 1291. We review the court's dismissal de novo, *Rodriguez v. Panayiotou*, 314 F.3d 979, 983 (9th Cir. 2002), and we affirm.

The district court properly dismissed the Finanders' action on the basis of res judicata because it involved the same claims and parties as a prior state court action that was dismissed on the merits under the California Strategic Lawsuit Against Public Participation (SLAPP) laws. *See Los Angeles Branch NAACP v. Los Angeles Unified Sch. Dist.*, 750 F.2d 731, 736-37 (9th Cir. 1984) (en banc) (applying the doctrine of res judicata where, *inter alia*, "the first suit concluded in a final judgment on the merits"); *Traditional Cat Ass'n, Inc. v. Gilbreath*, 13 Cal. Rptr. 3d 353, 357 (Cal. Ct. App. 2004) (stating that resolution of SLAPP motion requires courts to consider "substantive merits of the plaintiff's complaint").

The district court properly dismissed the complaint without further hearings or a trial because the Finanders could not state a viable claim. *See Rodriguez*, 314 F.3d at 983 (explaining that courts may grant dismissal with prejudice where plaintiffs can prove no set of facts that entitle them to relief).

The Finanders' remaining contentions lack merit.

AFFIRMED.