

JAN 26 2009

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

PEPI SCHAFLER,

Plaintiff - Appellant,

v.

HSBC BANK USA; et al.,

Defendants - Appellees.

Nos. 07-15412

07-15414

D.C. No. CV-06-05908-PJH

D.C. No. CV-06-06887-PJH

MEMORANDUM\*

Appeal from the United States District Court  
for the Northern District of California  
Phyllis J. Hamilton, District Judge, Presiding

Submitted January 13, 2009\*\*

Before: O'SCANNLAIN, BYBEE, and CALLAHAN, Circuit Judges.

Pepi Schafler 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 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). Accordingly, Schafler's request for oral argument is denied.

her actions and the district court's entry of a vexatious litigant order. We have jurisdiction under 28 U.S.C. § 1291. We review de novo dismissal based on res judicata, *Stewart v. U.S. Bancorp*, 297 F.3d 953, 956 (9th Cir. 2002), and for lack of personal jurisdiction, *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 800 (9th Cir. 2004). We review for an abuse of discretion entry of a vexatious litigant order. *De Long v. Hennessey*, 912 F.2d 1144, 1146 (9th Cir. 1990). We affirm.

The district court properly dismissed Schafler's actions against the bank defendants based on the doctrine of res judicata. Schafler may not relitigate whether the bank defendants conspired to convert money from a bank account that she and her then-husband jointly owned because those claims have already been litigated by the parties and ultimately decided by the New York court in favor of the bank defendants. *See Schafler v. HSBC Bank USA*, 803 N.Y.S.2d 924, 925 (N.Y. App. Div. 2005).

The district court properly dismissed Schafler's action against defendants Miller and Storie for lack of personal jurisdiction. *See Schwarzenegger*, 374 F.3d at 800 (explaining that the plaintiff bears the burden of demonstrating that jurisdiction is appropriate).

The district court did not abuse its discretion by entering a vexatious litigant order against Schafler. Schafler received notice of defendants' motion to declare her a vexatious litigant and was given an opportunity to respond, and the district court properly created an adequate record for review by outlining and discussing Schafler's frivolous and harassing litigation. Moreover, the vexatious litigant order is narrowly tailored. *See De Long*, 912 F.2d at 1147-48 (describing guidelines for vexatious litigant orders).

Schafler's remaining contentions are unpersuasive.

Schafler's outstanding motions and petitions are denied.

**AFFIRMED.**