

APR 29 2009

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

DEBORA TOWNSEND,

Plaintiff - Appellant,

v.

WHOLE FOODS MARKET,

Defendant - Appellee.

No. 08-15198

D.C. No. CV-07-05714-JW

MEMORANDUM\*

Appeal from the United States District Court  
for the Northern District of California  
James Ware, District Judge, Presiding

Submitted April 13, 2009\*\*

Before: GRABER, GOULD, and BEA, Circuit Judges.

Debora Townsend appeals pro se from the district court's judgment dismissing her action against Whole Foods Market alleging injury from the

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\* 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).

consumption of tainted rice. We have jurisdiction under 28 U.S.C. § 1291. We review de novo. *Noel v. Hall*, 341 F.3d 1148, 1154 (9th Cir. 2003). We affirm in part, vacate in part, and remand.

The district court properly concluded that the *Rooker-Feldman* doctrine barred Townsend’s action because it is a “forbidden de facto appeal” of state court judgments, and raises constitutional claims that are “inextricably intertwined” with those prior state court judgments. *Id.* at 1158.

Townsend’s remaining contentions are unpersuasive.

Dismissals under the *Rooker-Feldman* doctrine are dismissals for lack of subject matter jurisdiction, *Kougasian v. TMSL*, 359 F.3d 1136, 1139 (9th Cir. 2004), and thus, should be dismissed without prejudice, *Freeman v. Oakland Unified Sch. Dist.*, 179 F.3d 846, 847 (9th Cir. 1999) (order). Accordingly, we vacate the judgment, and remand for entry of judgment dismissing the action without prejudice.

**AFFIRMED in part; VACATED in part; and REMANDED.**