**FILED** 

### NOT FOR PUBLICATION

AUG 25 2014

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

# UNITED STATES COURT OF APPEALS

## FOR THE NINTH CIRCUIT

ROBERT SUMPTER,

Appellant,

v.

YELLOWSTONE MOUNTAIN CLUB, LLC; NEW CH YMC ACQUISITION LLC; CROSS HARBOR CAPITOL PARTNERS,

Appellees.

No. 13-35277

D.C. No. 2:11-cv-00066-SEH

**MEMORANDUM**\*

Appeal from the United States District Court for the District of Montana Sam E. Haddon, District Judge, Presiding

Argued and Submitted August 4, 2014 Pasadena, California

Before: KOZINSKI, Chief Judge, PAEZ and BERZON, Circuit Judges.

Sumpter argues that the settlement underlying the plan isn't fair and equitable; that the plan's treatment of Class 4 claims violates 11 U.S.C. § 1123(a)(4); that the plan was proposed in bad faith; and that the plan contains an

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

impermissible exculpation clause. But the plan at issue in Sumpter's first appeal was identical to the one he now challenges, so he could have raised all of those arguments at that time. Accordingly, Sumpter "waived [his] right" to raise his current objections by failing to raise them in his prior appeal. See In re Cellular 101, Inc., 539 F.3d 1150, 1155 (9th Cir. 2008); see also Munoz v. Cnty. of Imperial, 667 F.2d 811, 817 (9th Cir. 1982).

## AFFIRMED.