

FILED

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

DANIEL GOLDMAN, on behalf of
himself and all others similarly situated,

Plaintiff-Appellant,

v.

BAYER AG; et al.,

Defendants-Appellees.

No. 17-16697

D.C. No. 4:17-cv-00647-PJH

MEMORANDUM*

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

Submitted November 13, 2018**
San Francisco, California

Before: THOMAS, Chief Judge, GRABER, Circuit Judge, and KOBAYASHI,**
District Judge.

* 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).

*** The Honorable Leslie E. Kobayashi, United States District Judge for the District of Hawaii, sitting by designation.

Daniel Goldman appeals the district court's dismissal of his complaint for failure to state a claim upon which relief can be granted. We have jurisdiction under 28 U.S.C. § 1291, and we review *de novo*, *Kwan v. SanMedica Int'l*, 854 F.3d 1088, 1093 (9th Cir. 2017).

Following the entry of the dispositive order by the district court, the California Court of Appeal issued a decision in *Brady v. Bayer Corp.*, 237 Cal. Rptr. 3d 683 (Ct. App. 2018), which constitutes new relevant authority on the state law issues raised in the complaint. We therefore vacate the order of dismissal and remand this case to the district court to reconsider the dismissal in light of *Brady*.

We do not prejudge the outcome of that inquiry, nor do we decide any other issue raised by the parties in this appeal.

VACATED AND REMANDED. Each party to bear it's own cost on appeal.