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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

HENRY MANJARRES,	)	
	)	
Plaintiff,	)	Civ. No. 07-6323-TC
	)	
vs.	)	
	)	
	)	
OREGON DEPARTMENT OF	)	ORDER AND OPINION
TRANSPORTATION, An Agency	)	
of the State of Oregon,	)	
	)	
Defendant.	)	

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COFFIN, Magistrate Judge:

Plaintiff Henry Manjarres ("Manjarres") filed this action against the Oregon Department of Transportation ("ODOT") asserting claims under Title VII for retaliation, discrimination and harassment. ODOT moves for summary judgment on the grounds that claim preclusion bars Manjarres's claims. Under Fed. R. Civ. P. 73(b), the parties have consented to magistrate judge jurisdiction. For the reasons set forth below, the court GRANTS ODOT's motion for summary judgment.

*Background*

Manjarres is Native American and Hispanic. He has worked for ODOT for approximately twenty-five years. For the first twelve years of his employment, Manjarres worked as an

1 Engineering Specialist. Then, Manjarres became a Civil Rights  
2 Specialist in the Office of Civil Rights. He has worked in this  
3 capacity for the past thirteen years. (Doc. 37, Manjarres Decl.  
4 ¶¶ 2, 3.)

5 On October 27, 2007, Manjarres filed suit in Marion County  
6 Circuit Court against ODOT and individual defendants asserting  
7 claims under ORS 695A.030 for, among other things,  
8 discrimination and retaliation. (Doc.19, ex. 1.) In his state  
9 court complaint, Manjarres asserted that his employers  
10 discriminated against him due to his race and national origin.  
11 (Id. at \*2.) Specifically, Manjarres asserted that he was passed  
12 over for a position in favor of a less-qualified Caucasian  
13 employee; that ODOT retaliated against him for engaging in  
14 protected conduct; and that he was treated differently than  
15 similarly situated Caucasian employees. (Id. at \*2-6.)

16 Approximately ten days later, on November 7, 2007,  
17 Manjarres filed the above-captioned case. (Doc. 1.) The federal  
18 and state court actions arise out of identical operative facts.  
19 (Doc. 1; Doc. 19, ex. 1.) As in his state court complaint,  
20 Manjarres claimed discrimination based on race and national  
21 origin. (Doc. 1.) The federal claim alleged that Manjarres had  
22 been passed over for promotion in favor of a less qualified  
23 Caucasian employee; scrutinized to a higher degree than  
24 similarly situated Caucasian employees; denied vacation time  
25 when similarly situated Caucasian employees were not; and  
26 retaliated against for his internal complaints. (Doc. 1.)

27 On April 23, 2009, after a jury trial in which the jury had  
28 found in favor of defendants the state court entered a general

1 judgment in favor of ODOT and the other individual defendants.  
2 (Doc. 54.) This judgment dismissed all of Manjarres's claims  
3 with prejudice and resolved all matters related to Manjarres's  
4 lawsuit. (Doc. 54 at \*14.)

5 *Legal Standard*

6 Federal Rule of Civil Procedure 56 allows the granting of  
7 summary judgment:

8 if the pleadings, the discovery and disclosure  
9 materials on file, and any affidavits show that there  
10 is no genuine issue as to any material fact and that  
11 the movant is entitled to judgment as a matter of law.

12 Fed. R. Civ. P. 56(c). There must be no genuine issue of  
13 material fact. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242,  
14 247-48 (1986).

15 The movant has the initial burden of establishing that no  
16 genuine issue of material fact exists or that a material fact  
17 essential to the nonmovant's claim is missing. *Celotex Corp. v.*  
18 *Catrett*, 477 U.S. 317, 322-24 (1986). Once the movant has met  
19 its burden, the burden shifts to the nonmovant to produce  
20 specific evidence to establish a genuine issue of material fact  
21 or to establish the existence of all facts material to the  
22 claim. *Id.*; see also, *Bhan v. NME Hosp., Inc.*, 929 F.2d 1404,  
23 1409 (9th Cir. 1991); *Nissan Fire & Marine Ins. Co., Ltd., v.*  
24 *Fritz Cos., Inc.*, 210 F.3d 1099, 1105 (9th Cir. 2000). In order  
25 to meet this burden, the nonmovant "may not rely merely on  
26 allegations or denials in its own pleading," but must instead  
27 "set out specific facts showing a genuine issue of fact for  
28 trial." Fed. R. Civ. P. 56(e).

Material facts which preclude entry of summary judgment are

1 those which, under applicable substantive law, may affect the  
2 outcome of the case. *Anderson*, 477 U.S. at 248. Factual  
3 disputes are genuine if they "properly can be resolved only by a  
4 finder of fact because they may reasonably be resolved in favor  
5 of either party." *Id.* On the other hand, if, after the court  
6 has drawn all reasonable inferences in favor of the nonmovant,  
7 "the evidence is merely colorable, or is not significantly  
8 probative," summary judgment may be granted. *Id.*

#### 9 *Analysis*

10 1. *Second Claim for Relief: Violation of the Family and*  
11 *Medical Leave Act*

12 ODOT argues that Manjarres was never denied any vacation or  
13 Family and Medical Leave Act ("FMLA") and that Manjarres never  
14 suffered any adverse employment action related to his use of  
15 vacation or FMLA time. Manjarres represented, both in his  
16 response to ODOT's motion for summary judgment and in his  
17 response to ODOT's supplemental submission, that he agrees to  
18 dismiss this claim. Based on these concessions, the court  
19 grants ODOT's motion for summary judgment on this claim.

20 2. *First Claim for Relief: Violation of Title VII based on*  
21 *Race and National Origin Discrimination and Retaliation and*  
22 *Third Claim for Relief: Violation of 1981 based on "race*  
23 *and color" discrimination*

24 ODOT argues that the Marion County Circuit Court's adverse  
25 judgement bars plaintiff's Title VII and 1981 claims under the  
26 doctrine of res judicata, which is also known as claim  
27 preclusion. Manjarres disputes that claim preclusion bars his  
28 claim, stating that his state court claims were based on  
Oregon's state statute rather than Title VII and contending that  
he voluntarily dismissed his state statute discrimination claims

1 before the state court adjudicated those claims.

2 Claim preclusion prohibits the relitigation of any claims  
3 that were raised or could have been raised in a prior action.  
4 *Western Radio Servs. Co. Inc. v. Glickman*, 123 F.3d 1189, 1192  
5 (9th Cir. 1997) (citations omitted). The doctrine serves to  
6 "relieve parties of the cost and vexation of multiple lawsuits,  
7 conserve judicial resources, and by preventing inconsistent  
8 decisions, encourage reliance on adjudication." See *Marin v.*  
9 *HEW Health Care Financing Agency*, 769 F.2d 590, 594 (9th Cir.  
10 1985) (internal quotations omitted). Under 28 U.S.C. § 1738,  
11 federal courts must give state courts judgments the same  
12 preclusive effect as federal judgments. Claim preclusion  
13 applies only when there is: (1) an identity of claims; (2) a  
14 final judgment on the merits; and (3) identity or privity  
15 between the parties. *Western Radio*, 123 F.3d at 1192 (internal  
16 citations omitted).

17 Here, the first requirement for issue preclusion is  
18 satisfied. A comparison of Manjarres's state court and federal  
19 court complaints reveals that the claims, and the operative  
20 facts upon which they are based, are identical. Indeed, the only  
21 difference is that Manjarres brought the federal claims under  
22 Title VII and 42 U.S.C. § 1981 while he asserts the state claims  
23 pursuant to ORS 659A.030. Manjarres' assertion that issue  
24 preclusion does not apply because Title VII and ORS 659A.030 are  
25 different statutes is not persuasive. The Title VII claims  
26 could have been raised in the state court action. *Wirkkula v.*  
27 *Union Oil Co. of California*, 100 Or. App. 219, 221-22 (Or. App.  
28 1990) (stating there is a presumption of concurrent state

1 jurisdiction over a federal claim). Claim preclusion prevents  
2 relitigation of claims that could have been raised in a prior  
3 action. *Western Radio*, 123 F.3d at 1192. Moreover, to allow  
4 Manjarres this "second bite at the apple" by allowing him to  
5 litigate his discrimination and retaliation claims a second time  
6 in federal court would waste judicial resources and thwart claim  
7 preclusion's purpose of relieving parties of the cost and  
8 vexation of multiple lawsuits. *Marin*, 769 F.2d at 594.

9 Next, ODOT has provided evidence that Manjarres had a full  
10 and fair opportunity to litigate his claims before the state  
11 court entered a judgment on the merits. Manjarres appears to  
12 contend that there is no state court final judgment on the  
13 merits of his ORS 659A.030 race and national origin disparate  
14 treatment and hostile work environment claims because he  
15 voluntarily dismissed those claims. The Marion County Circuit  
16 Court General Judgment (doc 19, ex. 1) submitted by ODOT belies  
17 this claim. The General Judgment states:

18 At the conclusion of plaintiff's case;  
19 (1) plaintiff moved to dismiss his Second Claim, Count  
20 1: Race and National Origin Discrimination (Disparate  
21 Treatment) against the Oregon Department of  
22 Transportation pursuant to ORS 659A.030 in his First  
23 Amended Complaint, Second Claim, Count 3: Hostile Work  
24 Environment Race and National Origin Discrimination  
25 against the Oregon Department of Transportation  
26 pursuant to ORS 659A.030(1)(b)...The court granted  
27 the motions and *dismissed these claims with prejudice.*

28 (Doc. 19, ex. 1 at \*4, lines 4:13, emphasis added.) Manjarres  
fails to raise any dispute of material fact concerning the  
sufficiency or the finality of the state court proceedings.

Finally, the third element necessary for issue preclusion  
is satisfied—the parties in the state court action and the

1 parties in the above captioned federal action are identical.  
2 *Western Radio*, 123 F.3d at 1192.

3 ODOT has made a successful *prima facie* showing in support  
4 of their position that Manjarres's Title VII and 1981 claims are  
5 precluded by the final judgment of the Marion County Circuit  
6 Court.

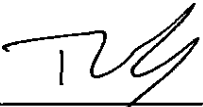
7 *Conclusion*

8 The order requiring ODOT to show cause filed April 29, 2009  
9 (doc. 53) is discharged.

10 The court grants ODOT's motion for summary judgment (doc  
11 15) and Manjarres's claims are dismissed with prejudice.

12 IT IS SO ORDERED.

13  
14 Dated this 2 day of June, 2009.

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19 THOMAS COFFIN  
20 United States Magistrate Judge  
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