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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

TERRENCE KINSELLA,

Plaintiff - Appellant,

v.

STEVE COOLEY, individually and as
District Attorney for Los Angeles County;
et al.,

Defendants - Appellees.

No. 08-56941

D.C. No. 2:07-cv-04158-GHK-CT

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
George H. King, District Judge, Presiding

Submitted March 4, 2010**
Pasadena, California

Before: CANBY, GOULD and IKUTA, Circuit Judges.

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

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

We find no error in the district court's dismissal of Kinsella's claims against the Los Angeles District Attorney's Office defendants. "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice" to survive a motion to dismiss. *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009). Kinsella's complaint failed to show that the defendants were under a legal duty to file the abstract of judgment, as required to state a cognizable claim under 42 U.S.C. § 1983. *See Barry v. Fowler*, 902 F.2d 770, 772 (9th Cir. 1990); *Johnson v. Duffy*, 588 F.2d 740, 743 (9th Cir. 1978).

With respect to Kinsella's claim against the Los Angeles Sheriff's Department defendants, Kinsella failed to raise the issue of tolling under California Government Code section 945.3 before the district court. While we have discretion to review the issue in the first instance, *see United States v. Carlson*, 900 F.2d 1346, 1349 (9th Cir. 1990) (granting the appellate court discretion to review issues of pure law for the first time on appeal), we hold that the "particular circumstances of the case [do not] overcome our presumption against hearing new arguments" here, *see Dream Palace v. County of Maricopa*, 384 F.3d 990, 1005 (9th Cir. 2004).

AFFIRMED.