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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

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| <p>MICHAEL JAMES HICKS,</p> <p>Plaintiff - Appellant,</p> <p>v.</p> <p>L. ROWE, in individual capacity and as Senior Librarian in official capacity; et al.,</p> <p>Defendants - Appellees.</p> |
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No. 11-55785

D.C. No. 2:11-cv-00680-CJC-
FMO

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Cormac J. Carney, District Judge, Presiding

Submitted November 13, 2012**

Before: CANBY, TROTT, and W. FLETCHER, Circuit Judges.

California state prisoner Michael James Hicks appeals pro se from the district court’s judgment dismissing his 42 U.S.C. § 1983 action alleging access-to-courts claims. We have jurisdiction under 28 U.S.C. § 1291. We review de novo

* 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).

the district court's decision to dismiss for failure to state a claim under 28 U.S.C. § 1915(e)(2)(B)(ii), *Barren v. Harrington*, 152 F.3d 1193, 1194 (9th Cir. 1998) (order), and for an abuse of discretion its decision to do so without leave to amend, *Lopez v. Smith*, 203 F.3d 1122, 1130 (9th Cir. 2000) (en banc). We affirm.

The district court properly dismissed Hicks' complaint because Hicks failed plausibly to allege actual injury. *See Lewis v. Casey*, 518 U.S. 343, 348-49 (1996) (access-to-courts claim requires actual prejudice to contemplated or existing litigation, such as inability to meet a filing deadline or to present a claim).

The district court did not abuse its discretion in dismissing the complaint without leave to amend because amendment would be futile. *See Lopez*, 203 F.3d at 1130 (dismissal without leave to amend is appropriate where the pleading could not be cured by the allegation of other facts).

AFFIRMED.