

DEC 31 2013

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

HELEN LILI HORVATH, DBA HW  
Associates,

Plaintiff - Appellee,

v.

ANTHONY TONEY, DBA UpTop Group,  
LLC,

Defendant - Appellant,

and

CAVA CUP SOCCER TOURNAMENT;  
AMERICAS BASKETBALL  
INTERNATIONAL, DBA ABI Slam  
Foundation,

Defendants.

No. 13-55013

D.C. No. 3:11-cv-01880-IEG-  
BLM

MEMORANDUM\*

Appeal from the United States District Court  
for the Southern District of California  
Irma E. Gonzalez, District Judge, Presiding

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

Submitted December 17, 2013\*\*

Before: GOODWIN, WALLACE, and GRABER, Circuit Judges.

Anthony Toney appeals pro se from the district court's order denying his motion to vacate the default judgment entered against him in a breach of contract action. We have jurisdiction under 28 U.S.C. § 1291. We review for an abuse of discretion. *Brandt v. Am. Bankers Ins. Co. of Fla.*, 653 F.3d 1108, 1110 (9th Cir. 2011). We affirm.

The district court did not abuse its discretion by denying Toney's motion to vacate the default judgment because Toney failed to show that such relief was warranted. *See Am. Ass'n of Naturopathic Physicians v. Hayhurst*, 227 F.3d 1104, 1108 (9th Cir. 2000) (setting forth factors to apply when considering a motion to vacate a default judgment, any of which are sufficient to deny the motion).

We do not consider arguments and allegations raised for the first time on appeal. *See Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009) (per curiam).

Plaintiff's request for judicial notice, set forth in her answering brief, is denied.

**AFFIRMED.**

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