

OCT 10 2014

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JOANNE WARWICK,

Plaintiff - Appellant,

v.

UNIVERSITY OF THE PACIFIC, a
California Corporation; et al.,

Defendants - Appellees.

No. 12-16909

D.C. No. 4:08-cv-03904-CW

MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Claudia Wilken, Chief Judge, Presiding

Submitted September 23, 2014**

Before: W. FLETCHER, RAWLINSON, and CHRISTEN, Circuit Judges.

Joanne Warwick, an attorney, appeals pro se from the district court's order denying her Federal Rule of Civil Procedure 60(b) motion for relief from the court's order denying her motion opposing costs. We have jurisdiction under 28

* 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).

U.S.C. § 1291. We review for an abuse of discretion, *Casey v. Albertson's Inc.*, 362 F.3d 1254, 1257 (9th Cir. 2004), and we affirm.

The district court did not abuse its discretion by denying Warwick's Rule 60(b) motion because Warwick failed to prove by clear and convincing evidence that defendants engaged in fraud, misrepresentation, or other misconduct. *See Casey*, 362 F.3d at 1260 (discussing Rule 60(b)(3) requirements); *see also Am. Ironworks & Erectors, Inc. v. N. Am. Constr. Corp.*, 248 F.3d 892, 899 (9th Cir. 2001) (no abuse of discretion by denying Rule 60(b) motion where movants merely reiterated arguments raised previously). We reject Warwick's contention that the district court should have held a hearing on the motion.

We do not consider issues and arguments incorporated by reference on appeal. *See Acosta-Huerta v. Estelle*, 7 F.3d 139, 144 (9th Cir. 1992).

We do not consider matters not specifically and distinctly raised and argued in the opening brief, or 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).

We deny Warwick's request for judicial notice, set forth in her reply brief, and grant University of the Pacific's request for judicial notice, filed on May 1, 2013.

AFFIRMED.