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U.S. COURT OF APPEALS

## NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JOSEPH BROWN,

Plaintiff - Appellant,

v.

UNITED STATES OF AMERICA; et al.,

Defendants - Appellees.

No. 14-17325

D.C. No. 1:12-cv-00165-AWI-  
GSA

MEMORANDUM\*

Appeal from the United States District Court  
for the Eastern District of California  
Anthony W. Ishii, District Judge, Presiding

Submitted February 24, 2016\*\*

Before: LEAVY, FERNANDEZ, and RAWLINSON, Circuit Judges.

Federal prisoner Joseph Brown appeals pro se from the district court's judgment dismissing his action, brought under *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971), alleging various constitutional claims. We have jurisdiction under 28 U.S.C. § 1291. We review

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\* 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).

for an abuse of discretion the district court’s dismissal without leave to amend, *Chappel v. Lab. Corp. of Am.*, 232 F.3d 719, 725 (9th Cir. 2000), and we affirm.

The district court did not abuse its discretion by denying Brown leave to amend his fifth amended complaint after providing him with five opportunities to amend and concluding that further amendment would be futile. *See id.* at 725-26 (“A district court acts within its discretion to deny leave to amend when amendment would be futile[.]”); *see also Gonzalez v. Planned Parenthood of L.A.*, 759 F.3d 1112, 1116 (9th Cir. 2014) (“[T]he district court’s discretion in denying amendment is particularly broad when it has previously given leave to amend.” (citation and internal quotation marks omitted)).

We do not address issues that are not clearly and distinctly raised in the opening brief, including whether the district court properly dismissed Brown’s fifth amended complaint for failure to state a claim under 28 U.S.C. §§ 1915A and 1915(e)(2)(B)(ii). *See Greenwood v. FAA*, 28 F.3d 971, 977 (9th Cir. 1994).

All pending motions are denied.

**AFFIRMED.**