

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

MAR 2 2017

FOR THE NINTH CIRCUIT

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

RAPHEAL G. RUSSELL,

Plaintiff-Appellant,

v.

BANK OF AMERICA; SERVICE LINK,

Defendants-Appellees.

No. 16-35076

D.C. No. 2:15-cv-00306-RSL

MEMORANDUM\*

Appeal from the United States District Court  
for the Western District of Washington  
Robert S. Lasnik, District Judge, Presiding

Submitted February 14, 2017\*\*

Before: GOODWIN, FARRIS, and FERNANDEZ, Circuit Judges.

Rapheal G. Russell appeals pro se from the district court's judgment dismissing his diversity action for failure to state a claim. We have jurisdiction under 28 U.S.C. § 1291. We review de novo. *Hebbe v. Pliler*, 627 F.3d 338, 341 (9th Cir. 2010). We affirm.

---

\* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 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 properly dismissed Russell's action because Russell failed to allege facts sufficient to state a claim for relief and failed to oppose defendants' motions to dismiss. *See id.* at 341-42 (although pro se pleadings are to be liberally construed, a plaintiff must still present factual allegations sufficient to state a plausible claim for relief); *see also* W.D. Wash. R. 7(b)(2) (the court may deem a failure to oppose a motion as an admission that the motion has merit).

We do not consider arguments not raised in the opening brief. *See Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009).

We reject as without merit Russell's argument related to the district court's failure to change the trial date.

**AFFIRMED.**