

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

JUN 1 2017

FOR THE NINTH CIRCUIT

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

DELANEY E. SMITH, Jr., M.D., an  
individual,

Plaintiff-Appellant,

and

STEPHANIE SMITH, an individual;  
BALDWIN HILLS MEDICAL GROUP  
CORPORATION, a California Medical  
Corporation,

Plaintiffs,

v.

LOS ANGELES COUNTY  
METROPOLITAN TRANSPORTATION  
AUTHORITY; et al.,

Defendants-Appellees.

No. 16-56176

D.C. No. 2:00-cv-05986-RGK-  
CWX

MEMORANDUM\*

Appeal from the United States District Court  
for the Central District of California  
R. Gary Klausner, District Judge, Presiding

Submitted May 24, 2017\*\*

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\* 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

Before: THOMAS, Chief Judge, and SILVERMAN and RAWLINSON,  
Circuit Judges.

Delaney E. Smith, Jr. appeals pro se from the district court's order denying his Federal Rule of Civil Procedure 60(b) motion. We have jurisdiction under 28 U.S.C. § 1291. We review for an abuse of discretion. *Casey v. Albertson's Inc.*, 362 F.3d 1254, 1257 (9th Cir. 2004). We affirm.

The district court did not abuse its discretion in denying Smith's Rule 60(b) motion because Smith filed his motion nearly ten years after this action was closed and Smith failed to establish any basis for relief. *See* Fed. R. Civ. P. 60(c)(1) (a motion to vacate an order under Rule 60(b) must be brought "within a reasonable time"); *Lemoge v. United States*, 587 F.3d 1188, 1196 (9th Cir. 2009) ("What constitutes 'reasonable time' depends upon the facts of each case, taking into consideration the interest in finality, the reason for delay, the practical ability of the litigant to learn earlier of the grounds relied upon, and prejudice to the other parties." (citation and internal quotation marks omitted)); *Casey*, 362 F.3d at 1260 (requirements for obtaining relief under Rule 60(b)(3)); *United States v. Berke*, 170 F.3d 882, 883 (9th Cir. 1999) (requirements for obtaining relief under Rule 60(b)(4)).

We do not consider matters not specifically and distinctly raised and argued

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without oral argument. *See* Fed. R. App. P. 34(a)(2).

in the opening brief, or arguments raised for the first time on appeal. *See Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009).

All pending motions and requests are denied.

**AFFIRMED.**