

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

MAR 23 2018

FOR THE NINTH CIRCUIT

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

RODERICK L. MITCHELL,

Plaintiff-Appellant,

v.

XAVIER BECERRA\*, Attorney General;  
JAMES C. SANCHEZ,

Defendants-Appellees.

No. 17-15168

D.C. No. 2:14-cv-02993-MCE-AC

MEMORANDUM\*\*

Appeal from the United States District Court  
for the Eastern District of California  
Morrison C. England, Jr., District Judge, Presiding

Submitted March 13, 2018\*\*\*

Before: LEAVY, M. SMITH, and CHRISTEN, Circuit Judges.

Roderick L. Mitchell appeals pro se from the district court's judgment  
dismissing his action alleging a violation of the ex post facto clause of the United

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\* Xavier Becerra has been substituted for his predecessor, Kamala D. Harris, as Attorney General under Fed. R. App. P. 43(c)(2).

\*\* 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).

States Constitution. We have jurisdiction under 28 U.S.C. § 1291. We review de novo a dismissal under Federal Rule of Civil Procedure 12(b)(6). *Hebbe v. Pliler*, 627 F.3d 338, 341 (9th Cir. 2010). We affirm.

The district court properly dismissed Mitchell's action because Mitchell failed to allege facts sufficient to show that California Penal Code § 290.46 has a punitive purpose or effect. *See* U.S. CONST. ART. I, § 9, cl. 3; *Smith v. Doe*, 538 U.S. 84, 104-05 (2003) (setting forth factors for determining whether a statute is punitive for purposes of the ex post facto clause).

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

Becerra's request for judicial notice, set forth in his answering brief, is granted.

**AFFIRMED.**