NOT FOR PUBLICATION

FILED

JUN 30 2017

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

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

DANIEL ACEDO, Plaintiff-Appellant, v. FRANCIS ABALOS; et al., Defendants-Appellees.	No. 16-56534 D.C. No. 3:15-cv-02532-H-BLM MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Marilyn L. Huff, District Judge, Presiding

Submitted June 26, 2017 **

Before: PAEZ, BEA, and MURGUIA, Circuit Judges.

California state prisoner Daniel Acedo appeals pro se from the district court's judgment dismissing his 42 U.S.C. § 1983 action alleging an access-to-courts claim. We have jurisdiction under 28 U.S.C. § 1291. We review de novo a dismissal under 28 U.S.C. § 1915(e)(2)(B)(ii). *Barren v. Harrington*, 152 F.3d

* 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).

1193, 1194 (9th Cir. 1998) (order). We affirm.

The district court properly dismissed Acedo's action because Acedo failed to allege facts sufficient to show that he suffered an actual injury due to defendants' alleged conduct. *See Lewis v. Casey*, 518 U.S. 343, 348-349, 351 (1996) (to state an access-to-courts claim, a prisoner must allege "actual injury").

The district court did not abuse its discretion by denying Acedo's Federal Rule of Civil Procedure 60(b) motion because Acedo failed to establish any basis for relief. *See Sch. Dist. No. 1J, Multnomah Cty., Or. v. ACandS, Inc.*, 5 F.3d 1255, 1262-63 (9th Cir. 1993) (setting forth standard of review and grounds for relief from judgment under Rule 60(b)).

Acedo's request for judicial notice (Dkt. Entry No. 14-2) is denied as unnecessary to the extent that it requests judicial notice of documents filed in the district court. To the extent Acedo requests judicial notice of documents that were not filed in the district court, we do not consider evidence introduced for the first time on appeal. *See Kirshner v. Uniden Corp. of Am.*, 842 F.2d 1074, 1077 (9th Cir. 1988).

We do not consider arguments and allegations raised for the first time on appeal. *See Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009).

AFFIRMED.