

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

MAY 29 2018

FOR THE NINTH CIRCUIT

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

LARRY A. O'LEXEY,

No. 18-35047

Plaintiff-Appellant,

D.C. No. 2:17-cv-00289-SAB

v.

MEMORANDUM*

WASHINGTON STATE US SENATORS
OFFICE; PATTY MURRAY, Washington
State US Senator,

Defendants-Appellees.

Appeal from the United States District Court
for the Eastern District of Washington
Stanley Allen Bastian, District Judge, Presiding

Submitted May 15, 2018**

Before: SILVERMAN, BEA, and WATFORD, Circuit Judges.

Larry A. O'Lexey appeals pro se from the district court's order dismissing his action arising from the denial of his claim for long-term disability benefits. We have jurisdiction under 28 U.S.C. § 1291. We review de novo a dismissal under

* 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).

Federal Rule of Civil Procedure 12(b)(6). *See Hebbe v. Pliler*, 627 F.3d 338, 341 (9th Cir. 2010). We affirm.

The district court properly dismissed O'Lexey's action because O'Lexey failed to allege facts sufficient to state any cognizable claim for relief. *See Johnson v. Riverside Healthcare Sys., LP*, 534 F.3d 1116, 1121-22 (9th Cir. 2008) ("A Rule 12(b)(6) dismissal may be based on either a lack of a cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal theory." (citation and internal quotations marks omitted)); *see also Hebbe*, 627 F.3d at 341-42 (although pro se pleadings are liberally construed, a plaintiff must still present factual allegations sufficient to state a plausible claim for relief).

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

We reject as unsupported by the record O'Lexey's contention that the district court violated his due process rights.

AFFIRMED.