

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

AUG 21 2018

FOR THE NINTH CIRCUIT

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

JEREMIAH W. BALIK,

No. 17-56066

Plaintiff-Appellant,

D.C. No. 2:17-cv-04906-GW-PLA

v.

MEMORANDUM*

WALT DISNEY COMPANY; et al.,

Defendants-Appellees.

Appeal from the United States District Court
for the Central District of California
George H. Wu, District Judge, Presiding

Submitted August 15, 2018**

Before: FARRIS, BYBEE, and N.R. SMITH, Circuit Judges.

Jeremiah W. Balik appeals pro se from the district court's judgment dismissing his diversity action alleging breach of contract. We have jurisdiction under 28 U.S.C. § 1291. We review de novo. *Barren v. Harrington*, 152 F.3d 1193, 1194 (9th Cir. 1998) (dismissal under 28 U.S.C. § 1915(e)(2)); *Dominguez v.*

* 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). Balik's request for oral argument, set forth in the opening brief, is denied.

Miller (In re Dominguez), 51 F.3d 1502, 1508 n.5 (9th Cir. 1995) (dismissal under Fed. R. Civ. P. 8). We affirm.

The district court properly dismissed Balik's complaint for failure to comply with Rule 8(a)(2) because the allegations in the complaint were vague, confusing, and failed to connect Balik's claims to defendants' conduct. *See* Fed. R. Civ. P. 8(a)(2) (pleading must contain "a short and plain statement of the claim showing that the pleader is entitled to relief"); *McHenry v. Renne*, 84 F.3d 1172, 1179-80 (9th Cir. 1996) (affirming dismissal of complaint that failed to set forth simple, concise and direct averments).

We reject as without merit Balik's contention that he was prejudiced by having Judge Wu preside over this matter.

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); *Greenwood v. FAA*, 28 F.3d 971, 977 (9th Cir. 1994) ("We will not manufacture arguments for an appellant, and a bare assertion does not preserve a claim[.]").

We do not consider documents and facts not presented to the district court. *See United States v. Elias*, 921 F.2d 870, 874 (9th Cir. 1990) ("Documents or facts not presented to the district court are not part of the record on appeal.").

All pending motions (Docket Entry Nos. 27, 29, and 43) are denied.

AFFIRMED.