

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

MAR 11 2020

FOR THE NINTH CIRCUIT

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

NICK MILETAK,

Plaintiff-Appellant,

v.

AT&T SERVICES, INC.,

Defendant-Appellee.

No. 19-15276

D.C. No. 3:12-cv-05326-EMC

MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Edward M. Chen, District Judge, Presiding

Submitted March 3, 2020**

Before: MURGUIA, CHRISTEN, and BADE, Circuit Judges.

Nick Miletak appeals pro se from the district court's order denying his Federal Rule of Civil Procedure 60(b)(6) motion in his diversity action alleging employment-related claims. We have jurisdiction under 28 U.S.C. § 1291. We review for an abuse of discretion. *Latshaw v. Trainer Wortham & Co.*, 452 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). Appellant's request for oral argument, set forth in the opening brief, is denied.

1097, 1100 (9th Cir. 2006). We affirm.

The district court did not abuse its discretion in denying Miletak's Rule 60(b)(6) motion because Miletak failed to demonstrate any grounds warranting such relief. *See id.* at 1102-04 (explaining that Rule 60(b)(6) relief may be granted "only where extraordinary circumstances" are present and that parties should be bound by the deliberate actions of themselves and their chosen counsel, even intentional attorney misconduct (citations and quotation marks omitted)).

To the extent Miletak seeks to challenge the district court's July 2, 2015 order, we do not consider his contentions because the notice of appeal is untimely as to that order. *See Fed. R. App. 4(a)(1)(A)* (notice of appeal must be filed within thirty days after entry of the judgment or order appealed from); *Stephanie-Cardona LLC v. Smith's Food & Drug Ctrs., Inc.*, 476 F.3d 701, 703 (9th Cir. 2007) ("A timely notice of appeal is a non-waivable jurisdictional requirement."); *see also Fed. R. App. P. (4)(a)(4)(A)(vi)* (a motion under Rule 60(b) extends the time to file an appeal if the motion is filed no later than 28 days after judgment is entered).

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.