

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

MAR 23 2022

FOR THE NINTH CIRCUIT

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

WENDELL DWAYNE O'NEAL,

No. 20-16892

Plaintiff-Appellant,

D.C. No. 2:17-cv-03025-JAD-DJA

v.

MEMORANDUM\*

TERRI ALBERTSON, Director; et al.,

Defendants-Appellees.

Appeal from the United States District Court  
for the District of Nevada

Jennifer A. Dorsey, District Judge, Presiding

Submitted March 16, 2022\*\*

Before: SILVERMAN, MILLER, and BUMATAY, Circuit Judges.

Wendell Dwayne O'Neal appeals pro se from the district court's judgment dismissing his action alleging federal and state law claims. 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). *Watison v. Carter*, 668 F.3d 1108, 1112 (9th Cir. 2012). We affirm.

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\* 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).

The district court properly dismissed O’Neal’s federal claims because O’Neal failed to allege facts sufficient to state a plausible claim. *See Hebbe v. Pliler*, 627 F.3d 338, 341-42 (9th Cir. 2010) (although pro se pleadings are construed liberally, a plaintiff must present factual allegations sufficient to state a plausible claim); *see also West v. Atkins*, 487 U.S. 42, 48 (1988) (elements of a § 1983 claim); *Thornton v. City of St. Helens*, 425 F.3d 1158, 1168 (9th Cir. 2005) (the absence of a deprivation of rights under § 1983 precludes a § 1985(3) claim premised on the same allegations); *Trerice v. Pedersen*, 769 F.2d 1398, 1403 (9th Cir. 1985) (no cause of action under § 1986 absent a valid § 1985 claim).

The district court did not abuse its discretion by denying O’Neal’s request to consolidate a pending action. *See Fed. R. Civ. P. 42(a)*; *Garity v. APWU Nat’l Labor Org.*, 828 F.3d 848, 855-56 (9th Cir. 2016) (district court has broad discretion to consolidate complaints).

The district court did not abuse its discretion by denying O’Neal’s motion for reconsideration because O’Neal failed to demonstrate any basis for such relief. *See Sch. Dist. No. 1J, Multnomah County, Or. v. ACandS, Inc.*, 5 F.3d 1255, 1262-63 (9th Cir. 1993) (setting forth standard of review and grounds for reconsideration).

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 do not consider documents 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 and requests are denied.

**AFFIRMED.**