

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

APR 15 2022

FOR THE NINTH CIRCUIT

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

PRAYED,

Plaintiff-Appellant,

and

FREDERIC T. READY,

Plaintiff,

v.

ALASKA RAILROAD CORPORATION; et
al.,

Defendants-Appellees.

No. 19-35775

D.C. No. 4:17-cv-00036-RRB

MEMORANDUM*

Appeal from the United States District Court
for the District of Alaska
Ralph R. Beistline, District Judge, Presiding

Submitted April 11, 2022**

Before: McKEOWN, CHRISTEN, and BRESS, Circuit Judges.

Prayed appeals pro se from the district court's judgment dismissing his

* 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).

action alleging various federal claims. We have jurisdiction under 28 U.S.C. § 1291. We review for an abuse of discretion the denial of leave to amend. *Cervantes v. Countrywide Home Loans, Inc.*, 656 F.3d 1034, 1041 (9th Cir. 2011). We affirm.

The district court did not abuse its discretion by denying Prayed further leave to amend because it had previously granted leave to amend and Prayed had not cured the complaint's deficiencies. *See id.* (explaining that leave to amend may be denied when amendment would be futile); *Zucco Partners, LLC v. Digimarc Corp.*, 552 F.3d 981, 1007 (9th Cir. 2009) (“[W]here the plaintiff has previously been granted leave to amend and has subsequently failed to add the requisite particularity to its claims, the district court’s discretion to deny leave to amend is particularly broad.” (internal quotation marks omitted)).

In his opening brief, Prayed fails to address the dismissal of his claims against the non-Union defendants and has therefore waived his challenge to the district court’s orders regarding those claims. *See Indep. Towers of Wash. v. Washington*, 350 F.3d 925, 929 (9th Cir. 2003) (“[W]e will not consider any claims that were not actually argued in appellant’s opening brief.”); *Acosta-Huerta v. Estelle*, 7 F.3d 139, 144 (9th Cir. 1992) (explaining that issues not supported by argument in appellant’s pro se opening brief are waived).

By order dated April 21, 2021, this court previously affirmed the district

court's judgment dismissing the Union defendants.

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).

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).

AFFIRMED.