

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

JAN 24 2024

FOR THE NINTH CIRCUIT

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

DOUG KISAKA, a California Resident,

No. 22-55945

Plaintiff-Appellant,

D.C. No. 2:21-cv-04757-CJC-GJS

v.

MEMORANDUM\*

UNIVERSITY OF SOUTHERN  
CALIFORNIA,

Defendant-Appellee.

Appeal from the United States District Court  
for the Central District of California  
Cormac J. Carney, District Judge, Presiding

Submitted January 17, 2024\*\*

Before: S.R. THOMAS, McKEOWN, and HURWITZ, Circuit Judges.

Doug Kisaka appeals pro se from the district court's order denying his second post-judgment motion for relief under Federal Rule of Civil Procedure 60(b)(1) in his action alleging various federal claims. We have jurisdiction under 28 U.S.C. § 1291. We review for an abuse of discretion. *Sch. Dist. No. 1J*,

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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).

*Multnomah County, Or. v. ACandS, Inc.*, 5 F.3d 1255, 1262 (9th Cir. 1993). We affirm.

The district court did not abuse its discretion by denying Kisaka's motion for relief from judgment because Kisaka failed to establish any basis for such relief. *See* Fed. R. Civ. P. 60(b)(1) (the court may relieve a party from a final judgment or order for mistake); *United States v. Schimmels (In re Schimmels)*, 127 F.3d 875, 884 (9th Cir. 1997) ("An involuntary dismissal generally acts as a judgment on the merits for the purposes of *res judicata*, regardless of whether the dismissal results from procedural error or from the court's considered examination of the plaintiff's substantive claims."). Contrary to Kisaka's contention, this court did not previously determine that the dismissal of Kisaka's first action was not a final judgment on the merits.

We do not consider matters not supported by argument 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).

All pending motions are denied.

**AFFIRMED.**