

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

SEP 28 2026

FOR THE NINTH CIRCUIT

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

ALAA ELKHARWILY,

Plaintiff - Appellant,

v.

FIRST INTERSTATE BANK, a Montana  
corporation and state chartered bank; LPSL  
CORPORATE SERVICES, INC.;  
MATHEW WADDELL; JENNIFER  
MATTSON,

Defendants - Appellees.

No. 25-3405

D.C. No. 2:25-cv-00104-TOR

MEMORANDUM\*

Appeal from the United States District Court  
for the Eastern District of Washington  
Thomas O. Rice, District Judge, Presiding

Submitted September 22, 2026\*\*

Before: OWENS, COLLINS, and SUNG, Circuit Judges.

Alaa Elkhawily appeals pro se from the district court's judgment dismissing his action alleging various federal and state law claims. We have jurisdiction

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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).

under 28 U.S.C. § 1291. We affirm.

Elkharwily has forfeited any challenge to the merits of the district court's dismissal because Elkharwily failed to file an opposition to defendants' motion to dismiss. *See Alaska Airlines, Inc. v. United Airlines, Inc.*, 948 F.2d 536, 546 n.15 (9th Cir. 1991) ("It is well established that an appellate court will not reverse a district court on the basis of a theory that was not raised below.").

The district court did not abuse its discretion by denying Elkharwily's motion for leave to file an amended complaint because amendment would have been futile. *See Cervantes v. Countrywide Home Loans, Inc.*, 656 F.3d 1034, 1041 (9th Cir. 2011) (setting forth standard of review and stating that leave to amend may be denied where amendment would be futile); *Metzler Inv. GMBH v. Corinthian Colls., Inc.*, 540 F.3d 1049, 1072 (9th Cir. 2008) (explaining that "the district court's discretion to deny leave to amend is particularly broad where plaintiff has previously amended the complaint" (citation omitted)).

The district court did not abuse its discretion by denying Elkharwily's motion for disqualification because Elkharwily did not establish any grounds for such relief. *See United States v. Johnson*, 610 F.3d 1138, 1147 (9th Cir. 2010) (setting forth standard of review and grounds for recusal). We reject as unsupported by the record Elkharwily's contentions that the district court was biased against him.

The district court did not abuse its discretion by denying Elkhawily's motions for entry of default because defendants did not fail to plead or otherwise defend the action. *See* Fed. R. Civ. P. 55(a) (providing that default can be entered against a party only where that party "has failed to plead or otherwise defend"); *Direct Mail Specialists, Inc. v. Eclat Computerized Techs., Inc.*, 840 F.2d 685, 689 (9th Cir. 1988) (a default judgment is inappropriate if defendant indicates its intent to defend the action); *Eitel v. McCool*, 782 F.2d 1470, 1471-72 (9th Cir. 1986) (setting forth standard of review and factors for determining whether to enter default judgment and explaining that "default judgments are ordinarily disfavored").

The District Court for the Western District of Washington did not abuse its discretion in transferring this action to the Eastern District of Washington. *See* 28 U.S.C. § 1404(a) (providing for transfer to a district where an action might have been brought); *Jones v. GNC Franchising, Inc.*, 211 F.3d 495, 498-99 (9th Cir. 2000) (setting forth standard of review and factors for transfer of venue); *see also City of Los Angeles, Harbor Div. v. Santa Monica Baykeeper*, 254 F.3d 882, 886 (9th Cir. 2001) (explaining that the filing of a notice of interlocutory appeal divests the district court of jurisdiction only over the particular issues involved in that appeal).

The district court did not abuse its discretion by denying Elkhawily's

motions to stay and to expedite the hearing on the stay motion or by denying as moot Elkharwily's motion for electronic case filing authorization after dismissing the action. *See S. Cal. Edison Co. v. Lynch*, 307 F.3d 794, 807 (9th Cir. 2002) (setting forth standard of review and explaining that district courts have "inherent power" to control their dockets and this court "will reverse a district court's litigation management decisions only if it abused its discretion").

Elkharwily's challenge to the district court's denial of his motions for temporary restraining orders is moot. *See Mt. Graham Red Squirrel v. Madigan*, 954 F.2d 1441, 1450 (9th Cir. 1992) (when underlying claims have been decided, the reversal of a denial of preliminary injunctive relief would have no practical consequences, and the issue is therefore moot).

We reject as without merit Elkharwily's contentions that appellate review is impossible because of alleged failures to docket filings in the district court and that the complaint filed September 16, 2024 was not the operative complaint.

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).

All pending motions and requests are denied.

**AFFIRMED.**