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U.S. COURT OF APPEALS

## NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ANTHONY J. BURRIOLA,

Plaintiff - Appellant,

v.

TED D'AMICO; et al.,

Defendants - Appellees.

No. 13-16418

D.C. No. 3:04-cv-00346-JCM-  
RAM

MEMORANDUM\*

Appeal from the United States District Court  
for the District of Nevada  
James C. Mahan, District Judge, Presiding

Submitted May 24, 2016\*\*

Before: REINHARDT, W. FLETCHER, and OWENS, Circuit Judges.

Nevada state prisoner Anthony J. Burriola appeals pro se from the district court's order denying his motion to reopen his 42 U.S.C. § 1983 action following the dismissal of his claims pursuant to a settlement agreement. We have jurisdiction under 28 U.S.C. § 1291. We review for an abuse of discretion. *Sch.*

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\* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

\*\* The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

*Dist. No. 1J, Multnomah Cty., Or. v. ACandS, Inc.*, 5 F.3d 1255, 1262 (9th Cir. 1993). We affirm.

The district court did not abuse its discretion by denying Burriola's motion to reopen because Burriola failed to demonstrate any basis for relief. *See id.* at 1262-63 (setting forth grounds for relief from judgment under Fed. R. Civ. P. 59(e) and Fed. R. Civ. P. 60(b)); *see also United States v. Stonehill*, 660 F.3d 415, 443-44 (9th Cir. 2011) (fraud upon the court in the Rule 60(b) context must be established by clear and convincing evidence).

We lack jurisdiction to review Burriola's challenges to the district court's prior orders because Burriola did not file a timely notice of appeal or a timely post-judgment tolling motion. *See* Fed. R. App. P. 4(a)(1)(A) (notice of appeal must be filed within 30 days after entry of judgment); *Bowles v. Russell*, 551 U.S. 205, 214 (2007) (“[T]he timely filing of a notice of appeal in a civil case is a jurisdictional requirement.”).

**AFFIRMED.**