

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

OCT 4 2017

FOR THE NINTH CIRCUIT

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

JAMES L. MACKLIN,

Plaintiff-Appellant,

v.

MATTHEW HOLLINGSWORTH, Select  
Portfolio Servicing, Inc.; et al.,

Defendants-Appellees.

No. 15-16034

D.C. No. 2:10-cv-01097-MCE-KJN

MEMORANDUM\*

Appeal from the United States District Court  
for the Eastern District of California  
Morrison C. England, Jr., District Judge, Presiding

Submitted September 26, 2017\*\*

Before: SILVERMAN, TALLMAN, and N.R. SMITH, Circuit Judges.

James L. Macklin appeals from the district court's order denying his motion for relief under Fed. R. Civ. P. 60(b). We have jurisdiction under 28 U.S.C.

§ 1291. We review de novo a district court's order denying a motion to vacate a

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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). Macklin's request for oral argument, set forth in his opening brief, is denied.

judgment under Fed. R. Civ. P. 60(b)(4). *Exp. Group v. Reef Indus., Inc.*, 54 F.3d 1466, 1469 (9th Cir. 1995). We affirm.

The district court properly denied Macklin’s motion to vacate its order under Fed. R. Civ. P. 60(b)(4) because Macklin failed to demonstrate that the district court “lacked jurisdiction, either as to the subject matter of the dispute or over the parties to be bound, or acted in a manner inconsistent with due process of law.” *United States v. Berke*, 170 F.3d 882, 883 (9th Cir. 1999).

To the extent Macklin seeks relief from the bankruptcy court’s judgment in a separate proceeding, such relief is outside the scope of this appeal. Moreover, the bankruptcy court entered an order denying Macklin’s request for relief under Fed. R. Civ. P. 60(b) and Macklin unsuccessfully appealed that order. *See Macklin v. Deutsche Bank Nat’l Trust Co.*, No. 16-15366 (9th Cir. Dec. 14, 2016).

We do not consider matters not specifically and distinctly raised and argued in the opening brief. *See Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009).

**AFFIRMED.**