

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

DEC 20 2018

FOR THE NINTH CIRCUIT

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

CHRISTOPHER LIPSEY,

Plaintiff-Appellant,

v.

E. McCUMSY; et al.,

Defendants-Appellees.

No. 17-15762

D.C. No. 3:15-cv-03479-VC

MEMORANDUM\*

Appeal from the United States District Court  
for the Northern District of California  
Vince Chhabria, District Judge, Presiding

Submitted December 17, 2018\*\*

Before: WALLACE, SILVERMAN, and McKEOWN, Circuit Judges.

California state prisoner Christopher Lipsey appeals pro se from the district court's summary judgment in his 42 U.S.C. § 1983 action alleging access-to-courts claims. We have jurisdiction under 28 U.S.C. § 1291. We review de novo.

*Brodheim v. Cry*, 584 F.3d 1262, 1267 (9th Cir. 2009). We affirm.

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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).

The district court properly granted summary judgment because Lipsey failed to raise a genuine dispute of material fact as to whether defendants caused an actual injury in connection with a nonfrivolous claim. *See Lewis v. Casey*, 518 U.S. 343, 348-49, 354-55 (1996) (setting forth elements of an access-to-courts claim and actual injury requirement).

We do not consider matters not specifically and distinctly raised and argued 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).

We do not consider documents not presented to the district court. *See United States v. Elias*, 921 F.2d 870, 874 (9th Cir. 1990) (“Documents or facts not presented to the district court are not part of the record on appeal.”).

Lipsey’s request for judicial notice, set forth in his opening brief, is denied as unnecessary. Lipsey’s motion for permission to file an oversized reply brief (Docket Entry No. 38) is granted. The Clerk shall file the reply brief submitted at Docket Entry No. 37.

**AFFIRMED.**