

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

DEC 26 2017

FOR THE NINTH CIRCUIT

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

RAPHEAL G. RUSSELL,

Plaintiff-Appellant,

v.

MYONG SUK MUELLER; et al.,

Defendants-Appellees.

No. 17-35697

D.C. No. 2:17-cv-00698-RSM

MEMORANDUM\*

Appeal from the United States District Court  
for the Western District of Washington  
Ricardo S. Martinez, Chief Judge, Presiding

Submitted December 18, 2017\*\*

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

Rapheal G. Russell appeals pro se from the district court's judgment dismissing for lack of subject matter jurisdiction his action arising from a property dispute. We have jurisdiction under 28 U.S.C. § 1291. We review de novo. *Rundgren v. Wash. Mut. Bank, FA*, 760 F.3d 1056, 1060 (9th Cir. 2014). We

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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).

affirm.

The district court properly dismissed Russell’s action for lack of subject matter jurisdiction because Russell failed to allege a federal question or jurisdiction based on diversity of citizenship. *See* 28 U.S.C. § 1331 (conferring jurisdiction on district courts in “civil actions arising under the Constitution, laws, or treaties of the United States”); *Caterpillar, Inc. v. Lewis*, 519 U.S. 61, 68 (1996) (28 U.S.C. § 1332(a) applies only when the state citizenship of each plaintiff is diverse from each defendant).

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).

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

**AFFIRMED.**