

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

DEC 9 2021

FOR THE NINTH CIRCUIT

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

DANNY FABRICANT,

Plaintiff-Appellant,

v.

J. T. SHARTLE, Warden,

Defendant-Appellee.

No. 18-15995

D.C. No. 4:15-cv-00236-JGZ

MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
Jennifer G. Zipps, District Judge, Presiding

Submitted December 7, 2021 **
San Francisco, California

Before: OWENS, BADE, and LEE, Circuit Judges.

Danny Fabricant, a federal prisoner, appeals pro se from the district court's order granting summary judgment and dismissing his lawsuit seeking declaratory and injunctive relief for alleged violations of his First Amendment right to receive mail, and from its denial of his motion under Federal Rule of Civil Procedure 60(b).

* 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).

We have jurisdiction under 28 U.S.C. § 1291, and review de novo. *Albino v. Baca*, 747 F.3d 1162, 1168 (9th Cir. 2014) (en banc); *Bateman v. U.S. Postal Serv.*, 231 F.3d 1220, 1223 (9th Cir. 2000) (denial of Rule 60(b) motion). We affirm.

The district court properly dismissed four of Fabricant's five claims for failure to state a claim under 28 U.S.C. § 1915A. The dismissed claims were vague and implausible, *see Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009), or challenged a practice that was reasonably related to a legitimate penological purpose. *See Thornburgh v. Abbott*, 490 U.S. 401, 413 (1989).

The district court also properly granted partial summary judgment on Fabricant's claims related to magazines already returned to the publisher. His transfer to another prison mooted his claims for declaratory and prospective injunctive relief. *See Alvarez v. Hill*, 667 F.3d 1061, 1064 (9th Cir. 2012).

Further, the district court properly dismissed without prejudice some of Fabricant's claims in which he had failed to pursue his administrative remedies through the final level of review. 42 U.S.C. § 1997e(a). It also did not err in granting summary judgment on Fabricant's as-applied First Amendment challenge to the warden's rejection of a single issue of *Time* magazine. The rejection was reasonably related to security and to inmate rehabilitation, both legitimate penological purposes. *See Thornburgh*, 490 U.S. at 413.

The district court did not abuse its discretion in denying Fabricant's motion

for relief from judgment because he failed to come forward with any basis for relief. *See Sch. Dist. No. 1J, Multnomah Cnty., Or. v. ACandS, Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993). Nor did it abuse its discretion in denying Fabricant’s motions for extensions of time. The district court reasonably refused to grant a further extension after it had already granted multiple extensions. And the district court did not abuse its discretion in denying his requests for injunctive relief. The reasons stated by the district court were proper. *E.g., Hayes v. Idaho Corr. Ctr.*, 849 F.3d 1204, 1211 (9th Cir. 2017) (explaining that mail from the courts is not legal mail); *Zepeda v. U.S. I.N.S.*, 753 F.2d 719, 727 (9th Cir. 1983) (holding that a court “may not attempt to determine the rights of persons not before the court”).

Finally, the district court has wide discretion in denying requests for discovery, *Laub v. U.S. Dep’t of Interior*, 342 F.3d 1080, 1093 (9th Cir. 2003), and thus did not abuse its discretion in denying Fabricant’s requests for additional discovery.

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); *Leer v. Murphy*, 844 F.2d 628, 634 (9th Cir. 1988) (stating that issues raised in brief but not supported by argument are deemed abandoned). All such arguments are thus waived.

Fabricant’s motion for an order directing appellee to file replacement

supplemental excerpts of record (Docket Entry No. 25) is denied.

AFFIRMED.