

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

JUN 20 2018

FOR THE NINTH CIRCUIT

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

JESSE T. MOTEN,

Plaintiff-Appellant,

v.

C. E. DUCART; et al.,

Defendants-Appellees.

No. 17-16903

D.C. No. 5:16-cv-04821-LHK

MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Lucy H. Koh, District Judge, Presiding

Submitted June 12, 2018**

Before: RAWLINSON, CLIFTON, and NGUYEN, Circuit Judges.

California state prisoner Jesse T. Moten appeals pro se from the district court's judgment dismissing his action brought under 42 U.S.C. § 1983 and the Racketeer Influenced and Corrupt Organizations Act ("RICO"). We have jurisdiction under 28 U.S.C. § 1291. We review de novo a dismissal for failure to

* 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).

state a claim under 28 U.S.C. § 1915A. *Hamilton v. Brown*, 630 F.3d 889, 892 (9th Cir. 2011). We affirm.

The district court properly dismissed Moten’s RICO claim because Moten failed to allege facts sufficient to state a plausible claim for relief. *See Hebbe v. Pliler*, 627 F.3d 338, 341-42 (9th Cir. 2010) (though pro se pleadings are to be liberally construed, a plaintiff must still present factual allegations sufficient to state a plausible claim for relief); *Living Designs, Inc. v. E.I. Dupont de Nemours & Co.*, 431 F.3d 353, 361 (9th Cir. 2005) (elements of a civil RICO claim); *Bowne v. Oistead*, 125 F.3d 800, 806 (9th Cir. 1997) (“Civil rights violations . . . do not fall within the statutory definition of ‘racketeering activity.’”).

We reject as meritless Moten’s contentions concerning joinder, and Judge Koh’s failure to recuse.

We do not consider arguments and allegations raised for the first time on appeal. *See Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009).

Moten’s request for judicial notice, set forth in his opening brief, is denied.

AFFIRMED.