

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

MAY 23 2018

FOR THE NINTH CIRCUIT

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

JEFFREY ALAN RISCHE,

Plaintiff-Appellant,

v.

UNITED STATES OF AMERICA; et al.,

Defendants-Appellees.

No. 17-35591

D.C. No. 2:16-cv-00339-RSL

MEMORANDUM*

Appeal from the United States District Court
for the Western District of Washington
Robert S. Lasnik, District Judge, Presiding

Submitted May 15, 2018**

Before: SILVERMAN, BEA, and WATFORD, Circuit Judges.

Jeffrey Alan Rische appeals pro se from the district court's summary judgment in favor of the United States and denial of Rische's motion for judgment on the pleadings in Rische's tax refund action. We have jurisdiction under 28 U.S.C. § 1291. We review de novo. *United States v. Alameda Gateway Ltd.*, 213

* 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). Rische's request for oral argument, set forth in the opening brief, is denied.

F.3d 1161, 1164 (9th Cir. 2000) (summary judgment); *3550 Stevens Creek Assocs. v. Barclays Bank of Cal.*, 915 F.2d 1355, 1357 (9th Cir. 1990) (judgment on the pleadings). We affirm.

The district court properly granted summary judgment for the government because Rische failed to raise a genuine dispute of material fact as to whether he is entitled to refunds for tax years 2013 and 2014. *See United States v. Janis*, 428 U.S. 433, 440 (1976) (in a tax refund suit the taxpayer bears the burden of proving the amount the taxpayer is entitled to recover).

The district court properly denied Rische's motion for judgment on the pleadings because Rische failed to establish that he is entitled to judgment as a matter of law. *See Fed. R. Civ. P. 12(c); Gen. Conference Corp. of Seventh-Day Adventists v. Seventh-Day Adventist Congregational Church*, 887 F.2d 228, 230 (9th Cir. 1989) (“[A] plaintiff is not entitled to judgment on the pleadings when the answer raises issues of fact that, if proved, would defeat recovery.”).

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).

AFFIRMED.