

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

MAR 17 2023

FOR THE NINTH CIRCUIT

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

FRED JAY JACKSON,

Plaintiff-Appellant,

v.

M. D. BITER, Warden,

Defendant-Appellee.

No. 21-17026

D.C. No. 1:21-cv-00774-DAD-
BAM

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Dale A. Drozd, District Judge, Presiding

Submitted March 14, 2023**

Before: SILVERMAN, SUNG, and SANCHEZ, Circuit Judges.

California state prisoner Fred Jay Jackson appeals pro se from the district court's judgment dismissing his 42 U.S.C. § 1983 action alleging an access-to-courts claim. We have jurisdiction under 28 U.S.C. § 1291. We review de novo a dismissal under 28 U.S.C. § 1915A for failure to state a claim. *Mangiaracina v.*

* 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).

Penzone, 849 F.3d 1191, 1195 (9th Cir. 2017). We affirm.

The district court properly dismissed Jackson's action because Jackson failed to allege facts sufficient to show that his inability to appear at the summary judgment hearing in his underlying state court case affected the outcome of his case. *See Lewis v. Casey*, 518 U.S. 343, 349-53 (1996) (elements of an access-to-courts claim and actual injury requirement).

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.