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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CYRUS YOO KIM,

Plaintiff - Appellant,

v.

FEDERAL WAY POST OFFICE
POSTMASTER,

Defendant - Appellee.

No. 08-35380

D.C. No. 2:07-cv-01917-JCC

MEMORANDUM*

Appeal from the United States District Court
for the Western District of Washington
John C. Coughenour, District Judge, Presiding

Submitted June 16, 2009**

Before: PAEZ, TALLMAN, and N.R. SMITH, Circuit Judges.

Cyrus Yoo Kim appeals pro se from the district court's judgment dismissing his action brought under *Bivens v. Six Unknown Named Agents of Federal Bureau*

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

of Narcotics, 403 U.S. 388 (1971). We have jurisdiction under 28 U.S.C. § 1291.

We review de novo the dismissal of a *Bivens* action for failure to state a claim.

Adams v. Johnson, 355 F.3d 1179, 1183 (9th Cir. 2004). We review for an abuse of discretion a district court's decision whether to retain supplemental jurisdiction.

Tritchler v. County of Lake, 358 F.3d 1150, 1153 (9th Cir. 2004). We affirm.

The district court properly dismissed Kim's action because respondeat superior is inapplicable in a *Bivens* action. *See Terrell v. Brewer*, 935 F.2d 1015, 1018 (9th Cir. 1991).

The district court did not abuse its discretion by declining to retain jurisdiction over Kim's state law tort claim once the *Bivens* claims were dismissed. *See* 28 U.S.C. § 1367(c)(3) ("The district court may decline to exercise supplemental jurisdiction over a claim under subsection (a) if the district court has dismissed all claims over which it has original jurisdiction.").

Kim's remaining contentions are unpersuasive.

AFFIRMED.