

SEP 01 2009

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>DALE OWEN DUSTIN,</p> <p>Plaintiff - Appellant,</p> <p>v.</p> <p>GEORGE GALAZA; et al.,</p> <p>Defendants - Appellees.</p>

No. 08-15951

D.C. No. 1:05-cv-00697-AWI-DLB

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Anthony W. Ishii, Chief District Judge, Presiding

Submitted August 20, 2009**

Before: WALLACE, HAWKINS, and THOMAS, Circuit Judges.

Dale Owen Dustin, a California state prisoner, appeals pro se from the district court's judgment dismissing his 42 U.S.C. § 1983 action for failing to

* 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).

comply with Federal Rule of Civil Procedure 8. We have jurisdiction pursuant to 28 U.S.C. § 1291. We review for an abuse of discretion. *McHenry v. Renne*, 84 F.3d 1172, 1177 (9th Cir. 1996). We affirm.

The district court did not abuse its discretion because the prolix allegations in Dustin's amended complaint did not comply with Federal Rule of Civil Procedure 8. *See id.* at 1177 (affirming dismissal with prejudice of plaintiff's complaint for repeated failures to correct noted pleading shortcomings). Moreover, the record indicates that further amendment would have been futile.

Dustin's remaining contentions are unpersuasive.

All pending motions are denied.

AFFIRMED.