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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>KATHY GRISMORE,</p> <p>Plaintiff - Appellant,</p> <p>v.</p> <p>CAPITAL ONE BANK; et al.,</p> <p>Defendants - Appellees.</p>
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No. 08-15635

D.C. No. 05-CV-02460-SMM

MEMORANDUM\*

Appeal from the United States District Court  
for the District of Arizona  
Stephen M. McNamee, District Judge, Presiding

Submitted September 14, 2009\*\*

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

Kathy Grismore appeals pro se from the district court’s judgment dismissing her action as a sanction under Federal Rule of Civil Procedure 37(b) for failure to

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\* 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). Accordingly, appellant’s request for oral argument is denied.

comply with discovery orders. Grismore also appeals from the postjudgment order awarding attorneys' fees and costs. We have jurisdiction under 28 U.S.C. § 1291 to review the judgment. We review for an abuse of discretion. *Hallett v. Morgan*, 296 F.3d 732, 751 (9th Cir. 2002) (discovery rulings); *Malone v. U.S. Postal Serv.*, 833 F.2d 128, 130 (9th Cir. 1987) (dismissal). We affirm in part and dismiss in part.

The district court did not abuse its discretion by granting defendants' motion to compel discovery responses because the information sought was relevant to damages. *See* Fed. R. Civ. P. 26(b)(1) (describing permissible discovery); *Hallett*, 296 F.3d at 751 (stating that broad discretion is vested in the trial court to permit discovery).

The district court did not abuse its discretion by dismissing the action because Grismore failed to respond to discovery after the district court ordered her several times to do so and warned her that noncompliance could result in dismissal. *See Malone*, 833 F.2d at 130, 132 & n.1 (setting forth factors that a district court must consider before dismissing an action for failure to comply with a court order).

We lack jurisdiction to review the district court's order granting attorneys' fees and costs because Grismore did not file an amended notice of appeal. *See Whitaker v. Garcetti*, 486 F.3d 572, 585 (9th Cir. 2007).

Grismore's remaining contentions are unavailing.

**AFFIRMED in part; DISMISSED in part.**