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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>IAN A. McELROY,</p> <p>Plaintiff - Appellant,</p> <p>v.</p> <p>CITY OF CORVALLIS, a Municipal Corporation of the State of Oregon; et al.,</p> <p>Defendants - Appellees.</p>

No. 09-35151

D.C. No. 6:00-cv-06318-HO

MEMORANDUM*

Appeal from the United States District Court
for the District of Oregon
Michael R. Hogan, District Judge, Presiding

Submitted June 29, 2010**

Before: ALARCÓN, LEAVY, and GRABER, Circuit Judges.

Ian A. McElroy appeals pro se from the district court’s judgment dismissing his action as a sanction under Federal Rule of Civil Procedure 37(b) for failure to comply with discovery orders. We have jurisdiction under 28 U.S.C. § 1291. We

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

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

review for an abuse of discretion. *Payne v. Exxon Corp.*, 121 F.3d 503, 507 (9th Cir. 1997). We affirm.

The district court did not abuse its discretion by dismissing the action after finding that McElroy's failure to comply with its discovery orders indicated willfulness and bad faith and after properly considering the pertinent factors for determining whether to dismiss under Rule 37. *See id.* at 507-08.

McElroy's remaining contentions are unpersuasive.

McElroy's request for judicial notice is granted.

AFFIRMED.