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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>CHARLES T. DAVIS,</p> <p>Plaintiff - Appellant,</p> <p>v.</p> <p>D. CALVIN, C/O; et al.,</p> <p>Defendants - Appellees.</p>
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No. 09-16655

D.C. No. 2:07-cv-01383-FCD-  
EFB

MEMORANDUM\*

Appeal from the United States District Court  
for the Eastern District of California  
Frank C. Damrell, Jr., District Judge, Presiding

Submitted September 22, 2010\*\*

Before: WALLACE, HAWKINS and THOMAS, Circuit Judges.

The district court did not abuse its discretion by dismissing Charles T. Davis’s (“Davis”) action under Federal Rule of Civil Procedure 41(b) after warning Davis to comply with its order to appear at his deposition and weighing the pertinent factors. *See Pagtalunan v. Galaza*, 291 F.3d 639, 642-43 (9th Cir.

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

2002) (discussing factors that courts must consider in determining whether to dismiss for failure to prosecute or failure to comply with a court order).

Because we affirm the district court's dismissal under Rule 41(b), we do not consider Davis's challenges to the district court's interlocutory orders. *See Al-Torki v. Kaempfen*, 78 F.3d 1381, 1386 (9th Cir. 1996).

**AFFIRMED.**