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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>MICHAEL SHAWN ROCHESTER,</p> <p>Plaintiff - Appellant,</p> <p>v.</p> <p>LINDA ROWE, MD; et al.,</p> <p>Defendants - Appellees.</p>
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No. 10-17772

D.C. No. 3:08-cv-04747-RS

MEMORANDUM\*

Appeal from the United States District Court  
for the Northern District of California  
Richard Seeborg, District Judge, Presiding

Submitted February 21, 2012\*\*

Before: FERNANDEZ, McKEOWN, and BYBEE, Circuit Judges.

California state prisoner Michael Shawn Rochester appeals pro se from the district court’s judgment dismissing his 42 U.S.C. § 1983 action for failure to prosecute. We have jurisdiction under 28 U.S.C. § 1291. We review for an abuse

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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).

of discretion. *Ash v. Cvetkov*, 739 F.2d 493, 495 (9th Cir. 1984). We affirm.

The district court did not abuse its discretion by dismissing the action without prejudice after it warned Rochester that failure to file an amended complaint could result in dismissal, and granted an extension of time to comply with its order. *See id.* at 496-97 (listing factors to consider before dismissing an action for lack of prosecution and explaining that “[a] relatively brief period of delay is sufficient to justify” a dismissal without prejudice for failure to prosecute).

We do not consider Rochester’s contentions concerning the district court’s order granting defendants’ motion to dismiss. *See id.* at 497-98 (interlocutory orders are not appealable after dismissal without prejudice for failure to prosecute).

**AFFIRMED.**