

JUL 25 2012

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>ROBERT P. BENYAMINI,</p> <p style="text-align: center;">Plaintiff - Appellant,</p> <p style="text-align: center;">v.</p> <p>M. FORSYTHE, Correctional Officer; et al.,</p> <p style="text-align: center;">Defendants - Appellees.</p>
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No. 11-16838

D.C. No. 2:09-cv-02453-FCD-
EFB

MEMORANDUM*

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

Submitted July 17, 2012**

Before: SCHROEDER, THOMAS, and SILVERMAN, Circuit Judges.

Robert P. Benyamini, a California state prisoner, appeals pro se from the district court’s judgment dismissing, without prejudice, his 42 U.S.C. § 1983 action alleging unconstitutional use of excessive force and retaliation. We have

* 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).

jurisdiction under 28 U.S.C. § 1291. We review for an abuse of discretion the district court's dismissal for failure to prosecute. *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 because Benyamini failed to effect service of process against defendants or file an amended complaint, after being warned that failure to do so would result in dismissal. *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).

Benyamini's remaining contentions are unpersuasive.

Benyamini's requests in his letter received on November 23, 2011 are denied.

AFFIRMED.