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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>ALBERT O’ROURKE,</p> <p>Plaintiff - Appellant,</p> <p>v.</p> <p>UNITED STATES OF AMERICA; et al.,</p> <p>Defendants - Appellees.</p>

No. 11-55118

D.C. No. 3:10-cv-00302-W-POR

MEMORANDUM*

Appeal from the United States District Court
for the Southern District of California
Thomas J. Whelan, District Judge, Presiding

Submitted December 19, 2012**

Before: GOODWIN, WALLACE, and FISHER, Circuit Judges.

Albert O’Rourke appeals pro se from the district court’s judgment dismissing for failure to prosecute his action alleging federal and state law claims related to eviction and unlawful detainer proceedings against O’Rourke. 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, *Al-Torki v. Kaempfen*, 78 F.3d 1381, 1384 (9th Cir. 1996), and we affirm.

The district court did not abuse its discretion by dismissing O'Rourke's action because O'Rourke failed to serve his amended complaint, to respond to the district court's notice regarding potential dismissal of his action for failure to prosecute, and to provide a credible explanation for his inaction and delay. *See* Fed. R. Civ. P. 41(b); *Al-Torki*, 78 F.3d at 1384 (discussing factors to be considered in dismissing an action for failure to prosecute).

O'Rourke's contentions regarding defendants' alleged conspiracy to try to obtain nuclear weapons studies and related information allegedly stored in the O'Rourke residence are not supported by the record.

AFFIRMED.