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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>KEVIN EZELL,</p> <p>Plaintiff - Appellant,</p> <p>v.</p> <p>DEPARTMENT OF REHABILITATION,</p> <p>Defendant - Appellee.</p>

No. 12-55274

D.C. No. 2:11-cv-01940-DSF-AJW

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Dale S. Fischer, District Judge, Presiding

Submitted June 18, 2013**

Before: TALLMAN, M. SMITH, and HURWITZ, Circuit Judges.

Kevin Ezell appeals pro se from the district court’s judgment dismissing his Americans with Disabilities Act action for failure to prosecute. We have jurisdiction under 28 U.S.C. § 1291. We review for an abuse of discretion, *Ash v. Cvetkov*, 739 F.2d 493, 495 (9th Cir. 1984), and we affirm.

* 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).

The district court did not abuse its discretion in dismissing Ezell’s action without prejudice for failure to prosecute after Ezell failed properly to serve defendant. *See* Fed. R. Civ. P. 4(j)(2) (requiring that a state-created agency be served either by “delivering a copy of the summons and of the complaint to its chief executive officer” or by “serving a copy of each in the manner prescribed by that state’s law”). Plaintiff’s attempts at service did not constitute “delivery” on defendant’s chief executive officer and did not comply with California’s requirements for service on a state agency. *See* Cal. Civ. Proc. Code § 416.50(a) (stating that service may be effectuated on a public entity by “delivering a copy of the summons and of the complaint to the clerk, secretary, president, presiding officer, or other head of its governing body”); *see also id.* § 415.20 (listing the requirements for substituted service); *id.* § 415.30 (listing the requirements for service by mail).

Ezell’s “motion for application for relief,” filed on August 10, 2012, is denied.

AFFIRMED.