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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>GILBERT OSUNA,</p> <p>Plaintiff - Appellant,</p> <p>v.</p> <p>MR. ERIVES, individual and LAPD Patrol B/W Unit Officer, official capacity; et al.,</p> <p>Defendants - Appellees.</p>
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No. 13-55275

D.C. No. 2:12-cv-02475-PA-VBK

MEMORANDUM\*

Appeal from the United States District Court  
for the Central District of California  
Percy Anderson, District Judge, Presiding

Submitted August 14, 2013\*\*

Before: SCHROEDER, GRABER, and PAEZ, Circuit Judges.

Gilbert Osuna appeals pro se from the district court’s judgment dismissing his 42 U.S.C. § 1983 action alleging excessive force and deliberate indifference.

We have jurisdiction under 28 U.S.C. § 1291. We review for an abuse of

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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).

discretion a dismissal for failure to prosecute, *Al-Torki v. Kaempfen*, 78 F.3d 1381, 1384 (9th Cir. 1996), and for failure to comply with a court order, *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260 (9th Cir. 1992). We vacate and remand.

The district court abused its discretion in dismissing Osuna's action with prejudice for failure to notify the court that Osuna had provided documents to the U.S. Marshals Service because it failed to consider less drastic alternatives. *Pagtalunan v. Galaza*, 291 F.3d 639, 642-43 (9th Cir. 2002) (listing factors to consider before dismissing for failure to prosecute or failure to comply with court orders and explaining that warning of dismissal prior to disobedience of a court order did not constitute consideration of less drastic alternatives); *Ferdik*, 963 F.2d at 1260 (“[D]ismissal is a harsh penalty and, therefore, it should only be imposed in extreme circumstances.”). While the district court had previously ordered Osuna on October 11, 2012 to provide the necessary documents to the U.S. Marshals Service, the record demonstrates that the district court sent the order to the incorrect address.

Osuna's request for counsel, set forth in his opening brief, is denied without prejudice to renewal before the district court.

**VACATED and REMANDED.**