

AUG 20 2014

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JAMES W. BRAMMER,

Plaintiff - Appellant,

v.

JAMES A. YATES, Warden; et al.,

Defendants - Appellees.

No. 13-15877

D.C. No. 1:07-cv-01350-SAB

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Stanley Albert Boone, Magistrate Judge, Presiding**

Submitted August 13, 2014***

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

California state prisoner James W. Brammer appeals pro se from the district court's judgment dismissing his 42 U.S.C. § 1983 action alleging deliberate

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The parties consented to proceed before a magistrate judge. *See* 28 U.S.C. § 636(c).

*** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

indifference to his serious medical needs. We have jurisdiction under 28 U.S.C. § 1291. We review for an abuse of discretion a dismissal for failure to comply with local rules. *Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (per curiam). We affirm.

The district court did not abuse its discretion by dismissing Brammer's action after Brammer failed to comply with repeated court orders to file a response or statement of non-opposition to defendant's motion to dismiss or face possible dismissal of his case. *See Pagtalunan v. Galaza*, 291 F.3d 639, 642 (9th Cir. 2002) (listing factors to be weighed before dismissing an action for failure to prosecute or failure to follow the local rules).

The district court did not abuse its discretion when it modified its judgment to a dismissal without prejudice in response to Brammer's first Fed. R. Civ. P. 60(b) motion, citing Brammer's pro se status and the fact that dismissal without prejudice is a "less drastic" alternative. *See Sch. Dist. No. 1J, Multnomah Cnty, Or. v. ACandS, Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993) (setting forth grounds justifying relief).

Moreover, the district court did not abuse its discretion by denying Brammer's second Rule 60(b) motion because Brammer did not set forth any basis for reconsideration. *See id.*

AFFIRMED.