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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MICHAEL A. VILLALOBOS,

Plaintiff - Appellant,

v.

TOM VILSACK, Secretary, Department
of Agriculture, (Forest Service), Agency,

Defendant - Appellee.

No. 13-17085

D.C. No. 3:12-cv-00138-MEJ

MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Maria-Elena James, Magistrate Judge, Presiding**

Submitted April 22, 2015***

Before: GOODWIN, BYBEE, and CHRISTEN, Circuit Judges.

Michael A. Villalobos appeals pro se from the district court's order dismissing his employment action alleging retaliation and discrimination. We have

* 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).

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

Pagtalunan v. Galaza, 291 F.3d 639, 640 (9th Cir. 2002) (dismissal for failure to comply with a court order); *Hernandez v. City of El Monte*, 138 F.3d 393, 398 (9th Cir. 1998) (dismissal for failure to prosecute). We affirm.

The district court did not abuse its discretion by dismissing Villalobos' action without prejudice after Villalobos failed to respond timely to the district court's order to show cause regarding his failure to prosecute and meet court deadlines, despite being warned that failure to respond could result in dismissal. *See Pagtalunan*, 291 F.3d at 642 (setting forth factors for a district court to consider in determining whether to dismiss for failure to comply with a court order or failure to prosecute); *see also Hernandez*, 138 F.3d at 400-01 (a presumption of prejudice arises from a plaintiff's failure to prosecute or provide a non-frivolous excuse for delay); *Ash v. Cvetkov*, 739 F.2d 493, 497 (9th Cir. 1984) (“[D]ismissal without prejudice is a more easily justified sanction for failure to prosecute.”).

We do not consider matters not specifically and distinctly raised and argued in the opening brief, or arguments and allegations raised for the first time on appeal. *See Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009) (per curiam).

AFFIRMED.