

OCT 05 2015

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U.S. COURT OF APPEALS

## NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JOAQUIN H. CIRIA,

Plaintiff - Appellant,

v.

BLACKWELL,

Defendant - Appellee.

No. 14-15858

D.C. No. 2:10-cv-01351-TLN-  
DAD

MEMORANDUM\*

Appeal from the United States District Court  
for the Eastern District of California  
Troy L. Nunley, District Judge, Presiding

Submitted September 21, 2015\*\*

Before: REINHARDT, LEAVY, and BERZON, Circuit Judges.

California state prisoner Joaquin H. Ciria appeals pro se from the district court's judgment dismissing his 42 U.S.C. § 1983 action alleging retaliation. We have jurisdiction under 28 U.S.C. § 1291. We review for an abuse of discretion a dismissal for failure to comply with a court order, *Pagtalunan v. Galaza*, 291 F.3d

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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).

639, 640 (9th Cir. 2002), and we affirm.

The district court did not abuse its discretion by dismissing Ciria's action because, despite a warning that his action could be dismissed and multiple extensions of time, Ciria failed to comply with the district court's order instructing him to file an opposition to defendant's motion for summary judgment. *See id.* at 642-43 (discussing the five factors for determining whether to dismiss under Fed. R. Civ. P. 41(b)); *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260 (9th Cir. 1992) (although dismissal is a harsh penalty, the district court's dismissal should not be disturbed absent "a definite and firm conviction" that it "committed a clear error of judgment" (citation and internal quotation marks omitted)).

Ciria's motion to file a substitute reply brief, filed on February 20, 2015, is granted. The Clerk shall file the reply brief received on February 2, 2015.

**AFFIRMED.**