

JAN 28 2016

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

EDWARD DEMERSON,

Plaintiff - Appellant,

v.

L. CARTAGENA, Lieutenant; et al.,

Defendants - Appellees.

No. 14-15174

D.C. No. 1:08-cv-00144-LJO-SKO

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Lawrence J. O'Neill, District Judge, Presiding

Submitted January 20, 2016**

Before: CANBY, TASHIMA, and NGUYEN, Circuit Judges.

Edward Demerson, a former California state prisoner, appeals pro se from the district court's judgment dismissing his 42 U.S.C. § 1983 action for failure to file a pretrial statement. We have jurisdiction under 28 U.S.C. § 1291. We review for an abuse of discretion the district court's dismissal for failure to comply with a

* 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).

court order. *In re Phenylpropanolamine (PPA) Prods. Liab. Litig.*, 460 F.3d 1217, 1226 (9th Cir. 2006). We affirm.

The district court did not abuse its discretion by dismissing Demerson's action because Demerson failed to comply with the district court's scheduling order and the relevant factors weigh in favor of dismissal. *See id.* at 1226-29 (discussing factors for determining whether to dismiss a case for failure to comply with a court order, and noting that Fed. R. Civ. P. 16(f) permits a judge "to make such orders as are just for a party's failure to obey a scheduling or pretrial order, including dismissal").

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

Demerson's motions, filed on November 5, 2014 and November 23, 2015, are denied as moot.

AFFIRMED.