

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

MAR 10 2020

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

JOEL JENNINGS WARNE,

No. 18-15974

Plaintiff-Appellant,

D.C. No. 4:16-cv-06773-DMR

v.

MEMORANDUM*

CITY AND COUNTY OF SAN
FRANCISCO; et al.,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of California
Donna M. Ryu, Magistrate Judge, Presiding**

Submitted March 3, 2020***

Before: MURGUIA, CHRISTEN, and BADE, Circuit Judges.

Joel Jennings Warne appeals pro se from the district court's judgment
dismissing as a discovery sanction his action alleging federal and state law claims.

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The parties consented to proceed before a magistrate judge. *See* 28 U.S.C. § 636(c); *Roell v. Withrow*, 538 U.S. 580, 590 (2003) (consent to proceed before a magistrate judge may be implied by a party's conduct during litigation).

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

We have jurisdiction under 28 U.S.C. § 1291. We review for an abuse of discretion a dismissal under Federal Rule of Civil Procedure 37. *Valley Eng'rs Inc. v. Elec. Eng'g Co.*, 158 F.3d 1051, 1052 (9th Cir. 1998). We affirm.

The district court did not abuse its discretion by dismissing Warne's action because Warne failed to appear for his scheduled in-person deposition despite multiple warnings that his failure to appear would result in dismissal. *See id.* at 1056-57 (factors to be considered before dismissing under Rule 37(b)).

We reject as without merit Warne's contentions regarding judicial bias or misconduct, or the district court's discovery-related rulings.

We do not consider matters not specifically and distinctly raised and argued in the opening brief, or documents and facts not presented to the district court. *See Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009); *United States v. Elias*, 921 F.2d 870, 874 (9th Cir. 1990).

All pending motions and requests are denied.

AFFIRMED.