

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

MAR 17 2023

FOR THE NINTH CIRCUIT

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

ANDY NGUYEN,

Plaintiff-Appellant,

v.

LOUIS DEJOY, United States Postmaster
General,

Defendant-Appellee.

No. 21-17059

D.C. No. 5:21-cv-02851-NC

MEMORANDUM*

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

Submitted March 14, 2023***

Before: SILVERMAN, SUNG, and SANCHEZ, Circuit Judges.

Andy Nguyen appeals pro se from the district court's judgment dismissing his action alleging violations of the Fair Labor Standards Act and the California

* 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).

*** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2). Nguyen's requests for a hearing, set forth in his opening and reply briefs, are denied.

Labor Code. 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 to amend the complaint. *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260 (9th Cir. 1992). We affirm.

The district court did not abuse its discretion in dismissing Nguyen’s action because Nguyen failed to file an amended complaint despite being warned that failure to do so would result in dismissal. *See* Fed. R. Civ. P. 41(b) (district court may dismiss an action “[i]f the plaintiff fails to prosecute or to comply with these rules or a court order”); *Ferdik*, 963 F.2d at 1260-62 (setting forth factors for determining whether an action should be dismissed for failure to comply with a court order and noting that this court may review the record independently to determine if the district court abused its discretion).

The district court did not abuse its discretion in denying Nguyen’s motion for relief from judgment because Nguyen failed to demonstrate any basis for such relief. *See Sch. Dist. No. 1J, Multnomah County, Or. v. ACandS, Inc.*, 5 F.3d 1255, 1262-63 (9th Cir. 1993) (setting forth standard of review and grounds for relief under Fed. R. Civ. P. 60(b)).

We reject as without merit Nguyen’s contention that the district court should have conducted a case management conference before dismissing his action.

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).

AFFIRMED.