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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

GARY H. BRUSH,

Plaintiff - Appellant,

v.

PETER FARBER-SZEKRENYI, et al.,

Defendants - Appellees.

No. 11-17818

D.C. No. 1:07-cv-01009-DLB

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Dennis L. Beck, Magistrate Judge, Presiding**

Submitted November 13, 2012***

Before: CANBY, TROTT, and W. FLETCHER, Circuit Judges.

Gary H. Brush, a California state prisoner, appeals pro se from the district court's judgment dismissing his 42 U.S.C. § 1983 action alleging excessive force

* 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).

and denial of medical care in violation of the Eighth Amendment. We have jurisdiction under 28 U.S.C. § 1291. We review for an abuse of discretion a dismissal as a sanction, *Sneller v. City of Bainbridge Island*, 606 F.3d 636, 638 (9th Cir. 2010), and we affirm.

The district court did not abuse its discretion by dismissing Brush's action as a sanction after reviewing the evidence before it and concluding that Brush submitted fraudulent affidavits concerning alleged violations of his Eighth Amendment rights. *See Truesdell v. S. Cal. Permanente Med. Grp.*, 293 F.3d 1146, 1153 (9th Cir. 2002) (Fed. R. Civ. P. 11 allows sanctions if a filing is either legally frivolous or factually misleading); *Anheuser-Busch, Inc. v. Natural Beverage Distribs.*, 69 F.3d 337, 348 (9th Cir. 1995) (a district court may exercise its inherent power to dismiss an action as a sanction when a party willfully deceives the court).

AFFIRMED.