

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

FEB 27 2017

FOR THE NINTH CIRCUIT

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

NEWAY MANGISTU, an individual,

No. 12-56860

Plaintiff-Appellant,

D.C. No. 2:11-cv-05271-SJO-RZ

v.

MEMORANDUM*

MORTON LA KRETZ, an individual; et
al.,

Defendants-Appellees.

Appeal from the United States District Court
for the Central District of California
S. James Otero, District Judge, Presiding

Submitted February 14, 2017**

Before: GOODWIN, FARRIS, and FERNANDEZ, Circuit Judges.

Neway Mengistu appeals pro se from the district court's order dismissing his housing discrimination action sua sponte for failure to prosecute. We have jurisdiction under 28 U.S.C. § 1291. We review for an abuse of discretion. *Oliva*

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

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

v. Sullivan, 958 F.2d 272, 274 (9th Cir. 1992). We vacate and remand.

The district court dismissed Mengistu’s action with prejudice for failure to prosecute after Mengistu did not appear on time at a scheduling conference. The district court failed to consider the adequacy of less drastic sanctions, such as dismissal without prejudice. *See id.* (“A district court abuses its discretion if it imposes a sanction of dismissal without first considering the impact of the sanction and the adequacy of less drastic sanctions.” (citation and internal quotation marks omitted)); *see also Ferdik v. Bonzelet*, 963 F.2d 1258, 1260 (9th Cir. 1992) (“[D]ismissal is a harsh penalty and, therefore, it should only be imposed in extreme circumstances.”). Accordingly, we vacate and remand for further proceedings.

We do not consider documents not filed with the district court. *See United States v. Elias*, 921 F.2d 870, 874 (9th Cir. 1990) (“Documents or facts not presented to the district court are not part of the record on appeal.”); *Lowry v. Barnhart*, 329 F.3d 1019, 1024 (9th Cir. 2003) (setting forth limited exceptions). Accordingly, Mengistu’s request to supplement the appellate record with documents not presented to the district court, filed June 12, 2015, is denied.

The parties shall bear their own costs on appeal.

VACATED and REMANDED.