

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

DEC 15 2022

FOR THE NINTH CIRCUIT

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

KEVIN R. SCHRUBB, Sr., AKA Kevin Ray  
Schrubb,

No. 21-55754

Plaintiff-Appellant,

D.C. No. 2:17-cv-08594-MWF-GJS

v.

MEMORANDUM\*

CALIFORNIA DEPARTMENT OF  
CORRECTIONS AND REHABILITATION,  
official capacity; JEFFREY A. BEARD,  
Former Secretary of CDCR, individual and  
official capacity; JANE DOE, Correctional  
Officer, individual; JOHN DOE 2,  
Correctional Officer, individual; JOHN DOE  
3, individual; M. MICKENS, Correctional  
Officer, individual,

Defendants-Appellees.

Appeal from the United States District Court  
for the Central District of California  
Michael W. Fitzgerald, District Judge, Presiding

Submitted December 8, 2022\*\*

Before: WALLACE, TALLMAN, and BYBEE, Circuit Judges.

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\* 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).

Kevin R. Schrubb, Sr., appeals pro se from the district court's judgment dismissing for failure to prosecute and comply with court orders his 42 U.S.C. § 1983 action alleging various constitutional claims. We have jurisdiction under 28 U.S.C. § 1291. We review for an abuse of discretion. *Pagtalunan v. Galaza*, 291 F.3d 639, 640 (9th Cir. 2002). We affirm.

The district court did not abuse its discretion by dismissing Schrubb's action after Schrubb failed to file an amended complaint, inform the court of an affirmative choice not to amend, or file a request for an additional extension of time, despite being warned that failure to do so would result in dismissal and having previously received an extension of time after failing to meet the initial deadline. *See id.* at 642-43 (discussing factors to consider in determining whether to dismiss under Fed. R. Civ. P. 41(b) for failure to comply with a court order; this court may review the record independently to determine if the district court abused its discretion).

The district court did not abuse its discretion by partially granting Schrubb's request for an extension of time to file an amended complaint. *See FTC v. Gill*, 265 F.3d 944, 954-55, 957 (9th Cir. 2001) (setting forth standard of review and explaining that a district court has broad discretion to control its docket).

We lack jurisdiction to consider the district court's post-judgment order denying Schrubb's Federal Rule of Civil Procedure 60(b) motion because Schrubb

failed to file an amended or separate notice of appeal. See Fed. R. App. P. 4(a)(4)(B)(ii); *TAAG Linhas Aereas de Angola v. Transamerica Airlines, Inc.*, 915 F.2d 1351, 1354 (9th Cir. 1990) (explaining that when a Rule 60(b) motion is filed after the notice of appeal, “an appeal specifically from the ruling on the motion must be taken if the issues raised in that motion are to be considered by the Court of Appeals”).

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.**