

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

OCT 26 2018

FOR THE NINTH CIRCUIT

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

MICHAEL ANGELO LENA,

Plaintiff-Appellant,

v.

PEOPLE OF THE STATE OF
CALIFORNIA; et al.,

Defendants-Appellees.

No. 17-16367

D.C. No. 1:16-cv-01036-LJO-SKO

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Lawrence J. O'Neill, Chief Judge, Presiding

Submitted October 22, 2018**

Before: SILVERMAN, GRABER, and GOULD, Circuit Judges.

California state prisoner Michael Angelo Lena appeals pro se from the district court's judgment dismissing his 42 U.S.C. § 1983 action alleging 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

* 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).

Cir. 2002) (dismissal for failure to comply with a court order); *Al-Torki v. Kaempfen*, 78 F.3d 1381, 1384 (9th Cir. 1996) (dismissal for failure to prosecute).

We affirm.

The district court did not abuse its discretion by dismissing Lena’s action for failure to prosecute because Lena failed to respond to the district court’s order denying reconsideration of the screening order and requiring Lena to file an amended complaint or proceed only on the cognizable First Amendment and Eighth Amendment claims. *See Edwards v. Marin Park, Inc.*, 356 F.3d 1058, 1064-65 (9th Cir. 2004) (“The failure of the plaintiff eventually to respond to the court’s ultimatum—either by amending the complaint or by indicating to the court that [he] will not do so—is properly met with the sanction of a Rule 41(b) dismissal.”); *Al-Torki*, 78 F.3d at 1384 (discussing the five factors for determining whether to dismiss under Fed. R. Civ. P. 41(b) for failure to prosecute).

Because we affirm the district court’s dismissal of Lena’s action for failure to prosecute, we do not consider his arguments challenging the district court’s screening order. *See id.* at 1386 (“[I]nterlocutory orders, generally appealable after final judgment, are not appealable after a dismissal for failure to prosecute, whether the failure to prosecute is purposeful or is a result of negligence or mistake.” (citation and internal quotation marks omitted)).

We do not consider Lena’s renewed motion to appoint pro bono counsel set

forth in his opening brief. In Docket Entry No. 11, this court denied Lena's motion for appointment of counsel and ordered that no motions for reconsideration, clarification, or modification of the denial shall be filed or entertained.

Lena's request that his case be transferred to the Northern District of California, set forth in his opening brief, is denied.

AFFIRMED.