NOT FOR PUBLICATION

FILED

DEC 11 2023

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

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

AMY SHERLOCK, on her own behalf and on behalf of her minor children, T.S. and S.S,

Plaintiff-Appellant,

and

ANDREW FLORES, an individual,

Plaintiff,

v.

GINA M. AUSTIN, an individual; AUSTIN LEGAL GROUP APC, a California Corporation; JOEL R. WOHLFEIL, an individual; LAWRENCE GERACI, AKA Larry, an individual; TAX & FINANCIAL CENTER, INC., a California Corporation; REBECCA BERRY, an individual; JESSICA CLAIRE MCELFRESH, an individual; SALAM RAZUKI, an individual; NINNUS MALAN, an individual; MICHAEL ROBERT WEINSTEIN, an individual; SCOTT TOOTHACRE, an individual; ELYSSA KULAS, an individual; FERRIS & BRITTON APC, a California Corporation; DAVID S. DEMIAN, an individual; ADAM C. WITT, an individual;

No. 23-55018

D.C. No.
3:20-cv-00656-JO-DEB

MEMORANDUM*

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

RISHI S. BHATT, an individual; FINCH, THORTON, AND BAIRD, a Limited Liability Partnership; JAMES D. CROSBY, an individual; ABHAY SCHWEITZER, DBA Techne, an individual; JAMES BARTELL, AKA Jim, an individual; BARTELL & ASSOCIATES, a California Corporation; NATALIE TRANGMY NGUYEN, an individual; AARON MAGAGNA, an individual; A-M INDUSTRIES, INC., a California Corporation; BRADFORD HARCOURT, an individual; ALAN CLAYBON, an individual; CITY OF SAN DIEGO, a municipality; 2018FMO, LLC, a California Limited Liability Company; FIROUZEH TIRANDAZI, an individual; MICHAEL TRAVIS PHELPS, an individual; DOUGLAS A. PETTIT, an individual; JULIA DALZELL, an individual; DOES, 3 through 50, inclusive,

Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of California
Jinsook Ohta, District Judge, Presiding

Submitted December 6, 2023[**]
Pasadena, California

Before: CALLAHAN, R. NELSON, and BADE, Circuit Judges.

Plaintiff-Appellant Amy Sherlock (Sherlock) appeals the district court's final

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

judgment dismissing, under Federal Rule of Civil Procedure 41(b), her antitrust conspiracy claims. The case was involuntarily dismissed for failure to prosecute after Sherlock declined to amend her First Amended Complaint (FAC). The district court dismissed some claims in the FAC with prejudice on immunity grounds and dismissed the remaining claims without prejudice—and with express leave to amend—for lack of standing.

In the FAC, Sherlock asserted her antitrust conspiracy claims under 42 U.S.C. § 1983 based on her dissatisfaction with two state-court rulings. The district court, in dismissing the FAC, held that the *Noerr-Pennington* Doctrine—under which "those who petition any department of the government for redress are generally immune from statutory liability for their petitioning conduct," *Sosa v. DIRECTV, Inc.*, 437 F.3d 923, 929 (9th Cir. 2006) (citation omitted)—barred relief. We have jurisdiction to review the Rule 41(b) dismissal under 28 U.S.C. § 1291, and we review for an abuse of discretion. *Pagtalunan v. Galaza*, 291 F.3d 639, 640 (9th Cir. 2002); *Applied Underwriters, Inc. v. Lichtenegger*, 913 F.3d 884, 890 (9th Cir. 2019).

Sherlock asserts that her appeal raises "one issue"—whether the district court properly applied the *Noerr-Pennington* Doctrine when it dismissed the FAC. But the real issue before us is whether the district court abused its discretion when it involuntarily dismissed her case. We hold that the district court did not abuse its

discretion in dismissing the entire action under Rule 41(b) in light of Sherlock's unreasonable delay, the public's interest in speedy litigation, and the court's need to manage its docket. *See Pagtalunan*, 291 F.3d at 642. Likewise, the risk of prejudice to the defendants weighed in favor of dismissal. *Hernandez v. City of El Monte*, 138 F.3d 393, 400–01 (9th Cir. 1998).

At bottom, however, Sherlock has not adequately briefed either the argument she claims is before us or any reason why the dismissal of her case was an abuse of discretion. Parties must make arguments "specifically and distinctly in [their] opening brief." *Indep. Towers of Wash. v. Washington*, 350 F.3d 925, 929 (9th Cir. 2003) (citation omitted). Here, the body of the opening brief is a mere seven pages, and the argument section is not even two pages. The brief fails to explain why the case's dismissal was improper. Instead, Sherlock suggests that her failure to amend the FAC despite having leave to do so was reasonable if "the trial court erred" when it held that "F&B's petitioning was immunized by the *Noerr-Pennington* doctrine," and dismissed the FAC on that basis. But her brief does not explain the *Noerr-Pennington* Doctrine or the sham-petitioning exception to that doctrine. And she makes no attempt to show why, on the facts here, that exception should apply.

Accordingly, the "one issue" that Sherlock claims is before us is waived, as is the ancillary, yet similarly inadequately briefed, claim that the district court abused its discretion by dismissing her case under Rule 41(b). *See Maldonado v. Morales*,

556 F.3d 1037, 1048 n.4 (9th Cir. 2009) ("Arguments made in passing and inadequately briefed are waived." (citation omitted)).

AFFIRMED.