

FILED

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JUN 29 2022

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

RAUL MENDEZ,

No. 21-35179

Plaintiff-Appellant,

D.C. No. 1:16-cv-00425-DCN

v.

MEMORANDUM*

COMMUNITY HEALTH CLINICS, INC.,
doing business as Terry Reilly Health
Services,

Defendant-Appellee.

Appeal from the United States District Court
for the District of Idaho
David C. Nye, District Judge, Presiding

Submitted June 15, 2022**

Before: SILVERMAN, WATFORD, and FORREST, Circuit Judges.

Raul Mendez appeals pro se from the district court's judgment dismissing his employment discrimination action as a discovery sanction under Federal Rule of Civil Procedure 37(b). We have jurisdiction under 28 U.S.C. § 1291. We

* 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).

EXHIBIT 2

review for an abuse of discretion. *Rio Props., Inc. v. Rio Int'l Interlink*, 284 F.3d 1007, 1022 (9th Cir. 2002). We affirm.

The district court did not abuse its discretion in dismissing Mendez's action after Mendez twice failed to appear for his deposition and the court found that Mendez's behavior was willful and in bad faith. *See Fed. R. Civ. P. 37(b)(2); In re Phenylpropanolamine (PPA) Prods. Liab. Litig.*, 460 F.3d 1217, 1233 (9th Cir. 2006) ("Rule 37 sanctions, including dismissal, may be imposed where the violation is due to willfulness, bad faith, *or* fault of the party." (citation and internal quotation marks omitted)); *Rio Props.*, 284 F.3d at 1022 (discussing five factors courts must weigh in determining whether to dismiss a case for failure to comply with a court order).

We reject as meritless Mendez's contentions that in dismissing this action as a sanction the district court was biased against him, failed to construe his pro se filings liberally, or failed to comply with the Federal Rules of Civil Procedure and the district court's local rules.

We do not consider matters not specifically and distinctly raised and argued in the opening brief, or arguments and allegations raised for the first time on appeal. *See Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009).

In light of our disposition, we do not consider Mendez's challenge to the district court's interlocutory orders. *See Al-Torki v. Kaempen*, 78 F.3d 1381, 1386

(9th Cir. 1996) (“[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)).

Community Health Clinics, Inc.’s request for sanctions, set forth in the answering brief, is denied.

AFFIRMED.

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

RAUL MENDEZ,

Plaintiff-Appellant,

v.

COMMUNITY HEALTH CLINICS, INC.,
doing business as Terry Reilly Health
Services,

Defendant-Appellee.

FILED

SEP 28 2022 - 7 day

10/5/22

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

12/1/22

No. 21-35179

D.C. No. 1:16-cv-00425-DCN
District of Idaho,
Boise

ORDER

Before: SILVERMAN, WATFORD, and FORREST, Circuit Judges.

The panel has voted to deny the petition for panel rehearing.

The full court has been advised of the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. *See* Fed. R. App. P. 35.

Mendez's petition for panel rehearing and petition for rehearing en banc (Docket Entry No. 22) are denied.

No further filings will be entertained in this closed case.

CERTIFICATE OF SERVICE

I certify that on February 16, 2023 I served a copy to:

Julie Fischer

332 N. Broadmore Way, Ste. 102

Nampa, ID 83687

- By United States mail
- By personal delivery
- By fax @ 208-475-2201

Raul Mendez

Typed/printed name

Signature

