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U.S. COURT OF APPEALS

**NOT FOR PUBLICATION**

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

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| DOMENIC TRICOME,<br><br>Plaintiff - Appellant,<br><br>v.<br><br>EBAY, INC.; et al.,<br><br>Defendants - Appellees. | No. 11-15546<br><br>D.C. No. 5:10-cv-03214-JF<br><br>MEMORANDUM* |

Appeal from the United States District Court
for the Northern District of California
Jeremy D. Fogel, District Judge, Presiding

Submitted October 9, 2012**

Before: RAWLINSON, MURGUIA, and WATFORD, Circuit Judges.

Domenic Tricome appeals pro se from the district court's order dismissing without prejudice his action arising from eBay, Inc.'s termination of his user account. We have jurisdiction under 28 U.S.C. § 1291. We review for an abuse of

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* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

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

discretion a dismissal for failure to prosecute, *Ash v. Cvetkov*, 739 F.2d 493, 495 (9th Cir. 1984), and we affirm.

The district court did not abuse its discretion by dismissing Tricome's action without prejudice for failure to prosecute after Tricome failed to appear at a case management conference and failed to respond timely to the court's order to show cause as to why the action should not be dismissed. *See id.* at 496-97 (discussing factors to guide the court's decision whether to dismiss for failure to prosecute).

We lack jurisdiction to review the decision of the Eastern District of Pennsylvania to transfer this action to the Northern District of California. *See Posnanski v. Gibney*, 421 F.3d 977, 980 (9th Cir. 2005) ("[W]e may not review a transfer under 28 U.S.C. § 1404 by a district court outside of our circuit to a district court within our circuit.").

**AFFIRMED.**