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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>MICHAEL JAMES HICKS,</p> <p style="text-align: center;">Plaintiff - Appellant,</p> <p>v.</p> <p>J. WALKER, Warden; et al.,</p> <p style="text-align: center;">Defendants - Appellees.</p>
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No. 08-17262

D.C. No. 08-CV-1610-GGH

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Gregory G. Hollows, Magistrate Judge, Presiding

Submitted February 23, 2009**

Before: KOZINSKI, Chief Judge, HAWKINS and GOULD, Circuit Judges.

A review of the record and appellant’s response to this court’s order to show cause indicates that the questions raised in this appeal are so insubstantial as not to

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

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

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require further argument. *See United States v. Hooton*, 693 F.2d 857, 858 (9th Cir. 1982) (per curiam) (stating standard). The district court properly dismissed the action without prejudice because appellant admitted in his complaint that he failed to exhaust administrative remedies. *See Wyatt v. Terhune*, 315 F.3d 1108, 1120 (9th Cir. 2002).

Accordingly, we summarily affirm the district court's judgment.

AFFIRMED.