

OCT 23 2009

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>BRYAN DAVIS, SR.,</p> <p>Plaintiff - Appellant,</p> <p>v.</p> <p>TALISMAN; et al.,</p> <p>Defendants - Appellees.</p>
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No. 08-15664

D.C. No. 07-CV-00281-LJO

MEMORANDUM*

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

Submitted October 13, 2009**

Before: B. FLETCHER, LEAVY, and RYMER, Circuit Judges.

Bryan Davis, Sr., a California state prisoner, appeals pro se from the district court’s judgment dismissing sua sponte his 42 U.S.C. § 1983 action for failure to exhaust administrative remedies pursuant to the Prison Litigation Reform Act, 42

* 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).

U.S.C. § 1997e(a). We have jurisdiction under 28 U.S.C. § 1291. We review de novo, *Resnick v. Hayes*, 213 F.3d 443, 447 (9th Cir. 2000), and we reverse and remand.

On the complaint form instructing him to explain briefly what happened at each level of the grievance process, Davis described what happened at the first and second levels of the process, wrote “third level” and did not give further details. The face of the complaint does not clearly concede nonexhaustion because it does not clearly show that Davis did not proceed to the third level of review, or that he was required to do so. *See Brown v. Valoff*, 422 F.3d 926, 935 (9th Cir. 2005) (explaining that there are circumstances where an inmate may not be required to exhaust all levels of review). Therefore we reverse the order of dismissal and remand for further proceedings. *See Wyatt v. Terhune*. 315 F.3d 1108, 1120 (reversing order of dismissal where the record was not clear that the inmate had conceded nonexhaustion).

REVERSED and REMANDED.