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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>JIMMY MAGEE,</p> <p>Plaintiff - Appellant,</p> <p>v.</p> <p>CHAVEZ, Correctional Officer; et al.,</p> <p>Defendants - Appellees.</p>

No. 09-15554

D.C. No. 1:05-cv-01563-OWW-DLB

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Oliver W. Wanger, District Judge, Presiding

Submitted December 15, 2009**

Before: GOODWIN, WALLACE, and CLIFTON, Circuit Judges.

Former California state prisoner Jimmy Magee appeals pro se from the district court's judgment dismissing his 42 U.S.C. § 1983 action, without

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

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

prejudice, for failure to exhaust administrative remedies as required by the Prison Litigation Reform Act, 42 U.S.C. § 1997e(a). We have jurisdiction under 28 U.S.C. § 1291. We review de novo. *Wyatt v. Terhune*, 315 F.3d 1108, 1117 (9th Cir. 2003). We affirm.

The district court properly dismissed Magee's action because he did not complete the prison grievance process before filing suit in federal court. *See McKinney v. Carey*, 311 F.3d 1198, 1199 (9th Cir. 2002) (per curiam) (holding that exhaustion under § 1997e(a) must occur prior to commencement of the action). Further, Magee failed to show that he was prevented from exhausting before bringing suit.

AFFIRMED.