

AUG 25 2010

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>MORRIS RODGERS,</p> <p>Plaintiff - Appellant,</p> <p>v.</p> <p>RUBEN REYNAGA; et al.,</p> <p>Defendants - Appellees.</p>

No. 09-17161

D.C. No. 1:06-cv-01083-JAT

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
James A. Teilborg, District Judge, Presiding **

Submitted August 10, 2010***

Before: HAWKINS, McKEOWN, and IKUTA, Circuit Judges.

Morris Rodgers, a California state prisoner, appeals pro se from the district court's judgment dismissing his 42 U.S.C. § 1983 action for failure to exhaust administrative remedies under the Prison Litigation Reform Act, 42 U.S.C.

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

** Sitting by designation.

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

§ 1997e(a). We have jurisdiction under 28 U.S.C. § 1291. We review de novo the district court's dismissal for failure to exhaust, and its factual determinations for clear error, *Wyatt v. Terhune*, 315 F.3d 1108, 1117 (9th Cir. 2003), and we affirm.

Contrary to Rodgers's contentions, the district court did not clearly err by resolving disputed issues of fact in favor of defendants. *See id.* at 1119-20 ("In deciding a motion to dismiss for failure to exhaust nonjudicial remedies, the court may look beyond the pleadings and decide disputed issues of fact."). Accordingly, the district court properly dismissed the action because Rodgers failed to exhaust administrative remedies prior to filing suit. *See Woodford v. Ngo*, 548 U.S. 81, 93-95 (2006) (holding that "proper exhaustion" under 42 U.S.C. § 1997e(a) is mandatory and requires adherence to administrative procedural rules).

Rodgers's remaining contentions are unpersuasive.

AFFIRMED.