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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ALBERT HAYES,

Plaintiff - Appellant,

v.

W. ROSSER, Individual, employed as a  
correctional officer; et al.,

Defendants - Appellees,

and

SULLIVAN, individual and official  
capacity (first name unknown),

Defendant.

No. 09-56495

D.C. No. 2:08-cv-02755-CJC-FFM

MEMORANDUM\*

Appeal from the United States District Court  
for the Central District of California  
Cormac J. Carney, District Judge, Presiding

Submitted September 22, 2010\*\*

Before: WALLACE, HAWKINS and THOMAS, Circuit Judges.

\* 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).

The district court did not clearly err by concluding that Albert Hayes (“Hayes”) still had administrative remedies available to him once he received a copy of the first-level response to his grievance. *See* Cal. Code Regs. tit. 15 § 3085(b). Accordingly, dismissal of his action for failure to exhaust administrative remedies was proper. *See Woodford v. Ngo*, 548 U.S. 81, 90 (2006) (“proper exhaustion” under 42 U.S.C. § 1997e(a) is mandatory and requires adherence to administrative procedural rules); *see also Wyatt v. Terhune*, 315 F.3d 1108, 1120 (9th Cir. 2003) (the proper remedy for non-exhaustion is dismissal without prejudice).

The district court did not abuse its discretion by denying Hayes’s post-judgment motion to correct the docket. *See Sch. Dist. No. 1J, Multnomah County, Or. v. ACandS, Inc.*, 315 F.3d 1255, 1262-63 (setting forth standard of review and requirements for reconsideration under Federal Rule of Civil Procedure 60(b)).

**AFFIRMED.**