

DEC 27 2010

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

STEVEN VLASICH,

Plaintiff - Appellant,

v.

F. REYNOSO; et al.,

Defendants - Appellees.

No. 07-15409

D.C. No. CV-01-05197-AWI/LJO

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Anthony W. Ishii, Chief Judge, Presiding

Submitted December 14, 2010**

Before: GOODWIN, WALLACE, and W. FLETCHER, Circuit Judges.

Steven Vlasich, 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 pursuant to 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.

** 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 application of substantive law and for clear error its factual determinations, *Wyatt v. Terhune*, 315 F.3d 1108, 1117 (9th Cir. 2003), and we affirm.

The district court did not clearly err in finding that Vlasich made only conclusory statements that defendants failed to respond to his inmate appeals, and that defendants' documents established that Vlasich failed to file any grievances that would trigger the administrative review process. *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."); *see also Woodford v. Ngo*, 548 U.S. 81, 93-95 (2006) (holding that "proper exhaustion" under § 1997e(a) is mandatory and requires adherence to administrative procedural rules). Vlasich's contentions regarding inmate appeals submitted after he filed this action are unpersuasive. *See McKinney v. Carey*, 311 F.3d 1198, 1200-01 (9th Cir. 2002) (per curiam) (inmates must exhaust administrative procedures *before* filing suit in federal court).

We construe the judgment as dismissing without prejudice. *See Wyatt*, 315 F.3d at 1120.

AFFIRMED.