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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>ARMANDO R. VENEGAS,</p> <p>Plaintiff - Appellant,</p> <p>v.</p> <p>INDYMAC FEDERAL BANK, FSB; et al.,</p> <p>Defendants - Appellees.</p>
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No. 09-17102

D.C. No. 2:09-cv-01236-JAM-  
GGH

MEMORANDUM\*

Appeal from the United States District Court  
for the Eastern District of California  
John A. Mendez, District Judge, Presiding

Submitted December 14, 2010\*\*

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

Armando R. Venegas, an attorney, appeals pro se from the district court judgment dismissing his state law action arising out of a foreclosure. We have

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\* 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).

jurisdiction under 28 U.S.C. § 1291. We review de novo. *King v. California*, 784 F.2d 910, 912 (9th Cir. 1986). We affirm in part, reverse in part, and remand.

The district court properly dismissed defendants Federal Deposit Insurance Corporation (“FDIC”) and IndyMac Federal Bank for lack of jurisdiction because Venegas failed to exhaust his administrative remedies by filing a claim with the FDIC prior to filing his complaint. *See* 12 U.S.C. § 1821(d)(13)(D); *Henderson v. Bank of New England*, 986 F.2d 319, 321 (9th Cir. 1993) (“A claimant must . . . first complete the claims process before seeking judicial review.”).

The district court also dismissed defendant NDEX West based on Venegas’s failure to exhaust. The exhaustion requirements of 12 U.S.C. § 1821, however, do not apply to NDEX West because it was not placed in receivership. *See* 12 U.S.C. § 1821(d)(13)(D) (requiring exhaustion prior to judicial review of claims against the assets of a failed institution for which the FDIC has been appointed receiver).

Accordingly, we reverse the judgment as to defendant NDEX West and remand for further proceedings.

Venegas’s contentions concerning other appeals are unpersuasive.

Each party shall bear its own costs on appeal.

**AFFIRMED in part, REVERSED in part, and REMANDED.**